

American Jurisprudence, Second Edition
Database updated August 2014

Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

Correlation Table

Summary

Scope:

This article discusses the nature and scope of actions for declaratory judgments, including state statutory provisions and the Federal Declaratory Judgment Act. It discusses the general circumstances under which such relief is available, subjects with which such relief may deal, procedures by which it is obtained, and the manner in which it is made effective.

Federal Aspects: This article treats actions under the Federal Declaratory Judgment Act.

Treated Elsewhere:

Appellate review of declaratory judgments, see [Am. Jur. 2d, Appellate Review §§ 17, 166](#)

Declaratory judgment as form of collateral attack, see [Am. Jur. 2d, Judgments § 749](#)

Declaratory judgments in actions involving copyright infringement, see [Am. Jur. 2d, Copyright and Literary Property § 253](#); patents, see [Am. Jur. 2d, Patents §§ 870 to 874](#); in cases involving the exclusion or deportation of aliens, see [Am. Jur. 2d, Aliens and Citizens §§ 1210, 1829, 1841](#); and in regard to the applicability, validity, and enforceability of restrictive covenants, see [Am. Jur. 2d, Covenants, Conditions, and Restrictions §§ 276, 277](#)

Judicial review of administrative action by way of declaratory judgment, see [Am. Jur. 2d, Administrative Law §§ 98, 406, 432, 515, 517](#)

Judgments, in general, see [Am. Jur. 2d, Judgments §§ 1 et seq.](#)

Research References:

Westlaw Databases

[All Federal Cases \(ALLFEDS\)](#)

[All State Cases \(ALLSTATES\)](#)

[American Law Reports \(ALR\)](#)

[West's A.L.R. Digest \(ALRDIGEST\)](#)

[American Jurisprudence 2d \(AMJUR\)](#)

[American Jurisprudence Legal Forms 2d \(AMJUR-LF\)](#)

[American Jurisprudence Proof of Facts \(AMJUR-POF\)](#)

[American Jurisprudence Pleading and Practice Forms Annotated \(AMJUR-PP\)](#)

[American Jurisprudence Trials \(AMJUR-TRIALS\)](#)

[Federal Procedure \(FEDPROC\)](#)

[Federal Procedural Forms \(FEDPROF\)](#)

[Uniform Laws Annotated \(ULA\)](#)

[United States Code Annotated \(USCA\)](#)

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS SUM

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

I. Introduction
A. Overview of Remedy

[Topic Summary Correlation Table](#)


Research References

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  [1](#), [2](#)

A.L.R. Library

A.L.R. Index, Declaratory Judgments

West's A.L.R. Digest, Declaratory Judgments  [1](#), [2](#)

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS I A REF

END OF DOCUMENT


American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

I. Introduction
A. Overview of Remedy

[Topic Summary Correlation Table References](#)

§ 1. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  1

Forms

[Am. Jur. Pleading and Practice Forms, Declaratory Judgments § 31](#) (Complaint in federal court—For declaratory judgment—General form)

Definition:

A "declaratory judgment" offers a means by which rights and obligations may be adjudicated in cases brought by any interested party involving an actual controversy that has not reached a stage at which either party may seek a coercive remedy and in cases where a party who could sue for coercive relief has not yet done so.[1]

A declaratory judgment is an action in which the court declares the rights, duties,[2] status, or other legal relations between the parties.[3] Unlike coercive relief, in which a party is ordered by the court to do or refrain from doing something, a declaratory judgment merely declares the legal relationship between the parties; a declaratory judgment action may be brought to establish rights once a conflict has arisen, or a party may request declaratory relief as a prophylactic measure before a breach occurs.[4] In effect, a claim for declaratory judgment brings to the present a litigable controversy which otherwise might only be tried in the future[5] so as to permit determination of a controversy before obligations are repudiated or rights are violated.[6] Moreover, while it is true that a declaratory judgment is usually obtained before there has been an interference with the rights of a party, such interference is not necessarily a bar to such an action.[7]

Under the Uniform Declaratory Judgments Act, any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.[8] A contract may be construed either before or after there has been a breach.[9]

[FN1] *Seattle Audubon Soc. v. Moseley*, 80 F.3d 1401 (9th Cir. 1996).

[FN2] *Fox v. Polk County Bd. of Sup'rs*, Polk County, Iowa, 569 N.W.2d 503 (Iowa 1997).

[FN3] *Bentley v. School Dist. No. 025 of Custer County, Nebraska*, 255 Neb. 404, 586 N.W.2d 306, 130 Ed. Law Rep. 900 (1998).

[FN4] *Gilb v. Chiang*, 186 Cal. App. 4th 444, 111 Cal. Rptr. 3d 822 (3d Dist. 2010).

[FN5] *In re Singh*, 457 B.R. 790 (Bankr. E.D. Cal. 2011).

[FN6] *Richardson v. Phillips*, 302 Ga. App. 305, 690 S.E.2d 918 (2010).

[FN7] *Merchants Motor Freight v. State Highway Commission*, 239 Iowa 888, 32 N.W.2d 773 (1948).

[FN8] Unif. Declaratory Judgments Act § 2.

[FN9] Unif. Declaratory Judgments Act § 3.

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 1

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

I. Introduction
A. Overview of Remedy

[Topic Summary Correlation Table References](#)

§ 2. Nature of proceedings

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 1, 2

Declaratory relief is by nature remedial,[1] and thus, a state declaratory judgment statute is to be liberally construed and administered.[2] However, a declaratory judgments statute does not create any substantive rights or causes of action.[3]

Under the Uniform Declaratory Judgments Act, the court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceedings.[4] Declaratory judgments are an equitable remedy and are not granted of right but only at the sound discretion of the court.[5]

An action for a declaratory judgment is sui generis,[6] and whether an action is to be treated as one at law or one in equity is to be determined by the nature of the dispute.[7] The test is whether, in the absence of a prayer for declaratory judgment, the issues presented should be properly disposed of in an equitable as opposed to a legal action.[8] Where no equitable relief is sought in an action for declaratory judgment, the action is to be treated as one at law.[9] Thus declaratory judgment actions, being statutory creatures, are neither inherently legal nor inherently equitable[10] but may depend upon equitable considerations.[11] The legal or equitable nature of a declaratory judgment proceeding is to be determined by the pleadings, the relief sought, and the nature of each case.[12]

[FN1] *State ex rel. Oklahoma Firefighters Pension and Retirement System v. City of Spencer*, 2009 OK 73, 237 P.3d 125 (Okla. 2009).

[FN2] § 7.

[FN3] *Sid Richardson Carbon & Gasoline Co. v. Interenergy Resources, Ltd.*, 99 F.3d 746 (5th Cir. 1996).

[FN4] *Unif. Declaratory Judgments Act* § 6.

[FN5] *Sierra Club v. Yeutter*, 911 F.2d 1405 (10th Cir. 1990).

As to equity, in general, see *Am. Jur. 2d, Actions* § 55; *Am. Jur. 2d, Equity* §§ 1 et seq.

[FN6] *Main Street Movies, Inc. v. Wellman*, 251 Neb. 367, 557 N.W.2d 641 (1997).

[FN7] *Struve Enterprises, Inc. v. Travelers Ins. Co.*, 243 Neb. 516, 500 N.W.2d 580 (1993).

[FN8] *Boyles v. Hausmann*, 246 Neb. 181, 517 N.W.2d 610 (1994).

[FN9] *Krzycki v. Genoa Nat. Bank*, 242 Neb. 819, 496 N.W.2d 916 (1993).

[FN10] *El Dia, Inc. v. Hernandez Colon*, 963 F.2d 488 (1st Cir. 1992).

[FN11] *Green v. Mansour*, 474 U.S. 64, 106 S. Ct. 423, 88 L. Ed. 2d 371 (1985).

[FN12] *Corsiglia v. Summit Center Corp.*, 348 N.W.2d 647 (Iowa Ct. App. 1984); *Hartford Fire Ins. Co. v. Aetna Ins. Co.*, 270 Or. 226, 527 P.2d 406 (1974).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 2

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

I. Introduction
A. Overview of Remedy

[Topic Summary](#) [Correlation Table](#) [References](#)

§ 3. Nature of proceedings—Under Federal Declaratory Judgment Act

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 2

The Federal Declaratory Judgment Act^[1] does not, in itself, create a substantive cause of action.^[2] It is procedural only^[3] and merely empowers a federal court to declare the legal rights and obligations of adversaries engaged in a justiciable controversy.^[4] It creates an opportunity, rather than a duty, to grant a new form of relief to qualifying litigants^[5] and enlarges the range of remedies available in federal courts but does not extend their jurisdiction.^[6] A less intrusive remedy than an injunction, a declaratory judgment provides relief when legal or equitable remedies are too intrusive or are otherwise inappropriate.^[7]

A primary objective of the Declaratory Judgment Act is to relieve litigants of the rule of the common law that no declaration of rights may be judicially adjudged unless a right has been violated.^[8] Declaratory relief does not share injunctive relief's requirement of irreparable harm.^[9]

[FN1] 28 U.S.C.A. §§ 2201, 2202.

[FN2] *Akins v. Penobscot Nation*, 130 F.3d 482 (1st Cir. 1997); *Executive Risk Indem. Inc. v. Sprint Corp.*, 282 F. Supp. 2d 1196 (D. Kan. 2003); *Dow Jones & Co., Inc. v. Harrods, Ltd.*, 237 F. Supp. 2d 394 (S.D. N.Y. 2002), judgment aff'd, 346 F.3d 357 (2d Cir. 2003).

[FN3] *Vaden v. Discover Bank*, 556 U.S. 49, 129 S. Ct. 1262, 173 L. Ed. 2d 206 (2009).

[FN4] *Kunkel v. Continental Cas. Co.*, 866 F.2d 1269 (10th Cir. 1989).

[FN5] *DeNovellis v. Shalala*, 124 F.3d 298 (1st Cir. 1997).

[FN6] *Mylan Pharmaceuticals, Inc. v. Thompson*, 268 F.3d 1323 (Fed. Cir. 2001).

[FN7] *Dickinson v. Indiana State Election Bd.*, 933 F.2d 497, 19 Fed. R. Serv. 3d 1437 (7th Cir. 1991).

[FN8] *County Com'rs of Queen Anne's County v. Days Cove Reclamation Co.*, 122 Md. App. 505, 713 A.2d 351 (1998).

[FN9] *Levin v. Harleston*, 966 F.2d 85, 75 Ed. Law Rep. 1017 (2d Cir. 1992).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 3

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

I. Introduction
B. Statutory Provisions

[Topic Summary Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  [21](#) to [26](#), [41](#) to [47](#)

A.L.R. Library

A.L.R. Index, Declaratory Judgments

West's A.L.R. Digest, Declaratory Judgments  [21](#) to [26](#), [41](#) to [47](#)

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS I B REF

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

I. Introduction
B. Statutory Provisions
1. State Statutes

[Topic Summary Correlation Table References](#)

§ 4. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  21 to 26

The validity of declaratory judgment acts has either been sustained or assumed in all jurisdictions ruling on the question.[1] The various state acts have been upheld in the face of such varied contentions as, for example, that a declaratory judgment act is inconsistent with due process of law,[2] that it deprives litigants of their right to jury trial,[3] that it abolishes the distinction between law and equity,[4] or that it violates a constitutional provision against the giving of advice by courts.[5]

[FN1] *Equitable Life Assur. Soc. of U.S. v. Hemenover*, 100 Colo. 231, 67 P.2d 80, 110 A.L.R. 1270 (1937); *Sage-Allen Co. v. Wheeler*, 119 Conn. 667, 179 A. 195, 98 A.L.R. 897 (1935); *Brindley v. Meara*, 209 Ind. 144, 198 N.E. 301, 101 A.L.R. 682 (1935); *City of Independence v. Hindenach*, 144 Kan. 414, 61 P.2d 124, 107 A.L.R. 645 (1936); *Jefferson County Distillery Co. v. Clifton*, 249 Ky. 815, 61 S.W.2d 645, 88 A.L.R. 1361 (1933); *Travelers Ins. Co. v. Greenough*, 88 N.H. 391, 190 A. 129, 109 A.L.R. 1096 (1937); *Woollard v. Schaffer Stores Co.*, 272 N.Y. 304, 5 N.E.2d 829, 109 A.L.R. 1262 (1936); *Corn v. Fort*, 170 Tenn. 377, 95 S.W.2d 620, 106 A.L.R. 647 (1936); *Town of Manchester v. Town of Townshend*, 109 Vt. 65, 192 A. 22, 110 A.L.R. 811 (1937); *State ex rel. Wisconsin Telephone Co. v. Henry*, 218 Wis. 302, 260 N.W. 486, 99 A.L.R. 1267 (1935).

As to actual controversies under the Federal Act, generally, see § 29.

[FN2] *Petition of Kariher*, 284 Pa. 455, 131 A. 265 (1925).

[FN3] *Herrlein v. Tocchini*, 128 Cal. App. 612, 18 P.2d 73 (1st Dist. 1933).

[FN4] *Fraser v. Cohen*, 159 Fla. 253, 31 So. 2d 463 (1947).

[FN5] *Faulkner v. City of Keene*, 85 N.H. 147, 155 A. 195 (1931).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 4

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

I. Introduction
B. Statutory Provisions
1. State Statutes

[Topic Summary Correlation Table References](#)

§ 5. Purpose

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑24

The Uniform Declaratory Judgments Act is declared to be remedial.[1] Its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations.[2] In other words, a purpose of a declaratory judgment is to liquidate doubts with respect to uncertainties or controversies which might otherwise result in subsequent litigation,[3] thereby quieting or stabilizing an uncertain or disputed jural relation,[4] by allowing courts to anticipate and resolve identifiable, certain disputes between adverse parties.[5] The intent of the Act is to have courts render declaratory judgments which may guide parties in their future conduct with each other,[6] thereby relieving them from the risk of taking undirected action incident to their rights, which action would jeopardize their interests[7] or cause them damage or serious difficulty,[8] including the expending of unnecessary funds[9] or imposition of civil or criminal sanctions.[10] Thus, actions for declaratory relief are intended to minimize avoidable losses and unnecessary accrual of damages[11] by enabling controversies of a justiciable nature to be brought before the courts for settlement and determination prior to the time that a wrong has been threatened or committed.[12] In addition, the purpose of the Uniform Declaratory Judgments Act is to allow parties to avoid multiple litigation by enabling litigants to seek a determination of questions formerly not amenable to judicial determination[13] and to afford a speedy and inexpensive method of adjudicating legal disputes.[14]

The purpose of a declaratory judgment is not to delay the trial of cases of actual controversy but to guide and protect the parties from uncertainty and insecurity with respect to the propriety of some future act or conduct in order not to jeopardize their interest.[15] It is not the purpose of the declaratory judgment acts to provide a substitute for other regular actions,[16] and in jurisdictions taking a rather restrictive view of the purposes of the Declaratory Judgment Act, it has even been said that declaratory relief should not be granted unless compelling and unusual circumstances exist.[17]

Observation:

If a declaratory judgment will terminate the uncertainty or controversy giving rise to the lawsuit, the trial court is duty-bound to declare the rights of the parties as to those matters upon which the parties join issue.[18]

[FN1] Unif. Declaratory Judgments Act § 12.

[FN2] Unif. Declaratory Judgments Act § 12.

[FN3] Meyer v. Sprint Spectrum L.P., 45 Cal. 4th 634, 88 Cal. Rptr. 3d 859, 200 P.3d 295 (2009).

[FN4] Meyer v. Sprint Spectrum L.P., 45 Cal. 4th 634, 88 Cal. Rptr. 3d 859, 200 P.3d 295 (2009).

[FN5] Olson v. Town of Cottage Grove, 2008 WI 51, 309 Wis. 2d 365, 749 N.W.2d 211 (2008).

[FN6] Buege v. Lee, 56 Ill. App. 3d 793, 14 Ill. Dec. 416, 372 N.E.2d 427 (2d Dist. 1978).

[FN7] Richards v. Liquid Controls Corp., 26 Ill. App. 3d 111, 325 N.E.2d 775 (2d Dist. 1975).

[FN8] Parker v. Rampton, 28 Utah 2d 36, 497 P.2d 848 (1972).

[FN9] Mid-Centre County Authority v. Boggs Tp., 34 Pa. Commw. 494, 384 A.2d 1008 (1978).

[FN10] Morial v. Guste, 365 So. 2d 1375 (La. 1978).

[FN11] Durant v. State, 456 Mich. 175, 566 N.W.2d 272, 119 Ed. Law Rep. 1146 (1997).

[FN12] Olson v. Town of Cottage Grove, 2008 WI 51, 309 Wis. 2d 365, 749 N.W.2d 211 (2008).

[FN13] Allstate Ins. Co. v. Hayes, 442 Mich. 56, 499 N.W.2d 743 (1993).

[FN14] James B. Beam Distilling Co. v. State, 263 Ga. 609, 437 S.E.2d 782 (1993).

[FN15] Sarrio v. Gwinnett County, 273 Ga. 404, 542 S.E.2d 485 (2001).

[FN16] Volkswagenwerk, A. G. v. Watson, 181 Ind. App. 155, 390 N.E.2d 1082 (1979); Matter of Dewar, 169 Mont. 437, 548 P.2d 149 (1976).

[FN17] State Farm Mut. Auto. Ins. Co. v. Semple, 407 Pa. 572, 180 A.2d 925 (1962).

[FN18] SpawGlass Const. Corp. v. City of Houston, 974 S.W.2d 876 (Tex. App. Houston 14th Dist. 1998).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 5

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

I. Introduction
B. Statutory Provisions
1. State Statutes

[Topic Summary Correlation Table References](#)

§ 6. Purpose—Limitations

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 23.1

Declaratory judgment statutes do not give parties greater rights than those they previously possessed^[1] or set up a new form of action but merely authorize a new form of relief^[2] to appropriate the rights of the parties and nothing more.^[3] The courts have no jurisdiction to declare social status.^[4] Moreover, the Declaratory Judgment Act does not license litigants or attorneys to fish for legal advice.^[5]

Observation:

The owners of a building bringing an action to challenge the constitutionality of an ordinance requiring a permit to be procured prior to the conversion of a rental property to condominiums or cooperatives could not avoid a statute of limitations bar by claiming that in any future enforcement action they would promptly raise the unconstitutionality of the ordinance as a defense.^[6] A time bar cannot be sidestepped merely by asserting that a declaratory judgment suit was brought to establish defenses against a "rainy day" in the future when the ordinance might be enforced against the plaintiffs.^[7]

[FN1] *Liberty Mut. Ins. Co. v. Bishop*, 211 Va. 414, 177 S.E.2d 519 (1970).

[FN2] *Hodgdon v. Campbell*, 411 A.2d 667 (Me. 1980).

[FN3] *Griffith v. Nielsen*, 141 Vt. 423, 449 A.2d 965 (1982).

[FN4] *Little v. Wachovia Bank & Trust Co.*, 252 N.C. 229, 113 S.E.2d 689 (1960).

[FN5] *Kelner v. Woody*, 399 So. 2d 35 (Fla. 3d DCA 1981).

[FN6] *Gilbert v. City of Cambridge*, 932 F.2d 51 (1st Cir. 1991).

[FN7] [Gilbert v. City of Cambridge, 932 F.2d 51 \(1st Cir. 1991\).](#)

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 6

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

I. Introduction
B. Statutory Provisions
1. State Statutes

[Topic Summary Correlation Table References](#)

§ 7. Construction of statutes

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  23.1 to 26

The Uniform Declaratory Judgments Act is broad in scope^[1] and is to be liberally construed and administered^[2] to provide a simple and effective means by which parties may secure a binding judicial determination of their legal rights, status, or relations pursuant to statutes and written instruments.^[3] Declaratory judgments acts are not without their limitations.^[4] The provision of the Uniform Declaratory Judgments Act that it is to be liberally construed and administered does not warrant an extension of the provisions of the act beyond the field of its purpose;^[5] nor can an act which declares that it is remedial and that its purpose is to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations be interpreted as intended to abolish the well-known causes of action or as designed to furnish an additional remedy where an adequate one existed before.^[6]

[FN1] *Doe v. Johns-Manville Corp.*, 324 Pa. Super. 469, 471 A.2d 1252 (1984).

[FN2] Unif. Declaratory Judgments Act § 12.

[FN3] *Colquhoun v. Webber*, 684 A.2d 405 (Me. 1996).

[FN4] *Massachusetts Ass'n of Independent Ins. Agents & Brokers, Inc. v. Commissioner of Ins.*, 373 Mass. 290, 367 N.E.2d 796 (1977); *Doe v. Johns-Manville Corp.*, 324 Pa. Super. 469, 471 A.2d 1252 (1984).

[FN5] *Saline Branch Drainage Dist. v. Urbana-Champaign Sanitary Dist.*, 399 Ill. 189, 77 N.E.2d 158 (1948); *State ex rel. Kansas City Bridge Co. v. Terte*, 345 Mo. 95, 131 S.W.2d 587, 124 A.L.R. 1331 (1939).

[FN6] *Brindley v. Meara*, 209 Ind. 144, 198 N.E. 301, 101 A.L.R. 682 (1935).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 7

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

I. Introduction
B. Statutory Provisions
1. State Statutes

[Topic Summary Correlation Table References](#)

§ 8. Construction of statutes—Uniformity of interpretation

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  21 to 26

The Uniform Declaratory Judgments Act is to be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it and to harmonize as far as possible with federal laws and regulations on the subject of declaratory judgments and decrees.[1] Under this provision, decisions of the highest courts of other states under a like act are precedents by which the court is more or less imperatively bound.[2] The court will not interpret the scope of the declaratory judgment statute in a narrow or technical sense as long as the party seeking declaratory relief presents the court with an actual controversy.[3] Where a state declaratory judgment act is similar to the Uniform Act and the Federal Act, federal court decisions will be persuasive in interpreting the state act.[4]

[FN1] Unif. Declaratory Judgments Act § 15.

[FN2] *Town of Manchester v. Town of Townshend*, 109 Vt. 65, 192 A. 22, 110 A.L.R. 811 (1937).

[FN3] *Southwestern Public Service Co. v. Thunder Basin Coal Co.*, 978 P.2d 1138 (Wyo. 1999).

[FN4] *State ex rel. U.S. Fire Ins. Co. v. Terte*, 351 Mo. 1089, 176 S.W.2d 25 (1943).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 8

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

I. Introduction
B. Statutory Provisions
1. State Statutes

[Topic Summary Correlation Table References](#)

§ 9. Construction of statutes—"Person" defined

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  21

Definition:

The word "person" whenever used in the Uniform Declaratory Judgments Act is construed to mean any person, partnership, joint stock company, unincorporated association, or society or municipal or other corporation of any character whatsoever.[1]

This definitional section does not in terms grant standing to sue where it would otherwise be unavailable to the municipality.[2]

[FN1] Unif. Declaratory Judgments Act § 13.

[FN2] *Town of Wickenburg v. State*, 115 Ariz. 465, 565 P.2d 1326 (Ct. App. Div. 1 1977).

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

I. Introduction
B. Statutory Provisions
2. Federal Declaratory Judgment Act

[Topic Summary Correlation Table References](#)

§ 10. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  21 to 26

In a case of actual controversy within its jurisdiction, as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought, and any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.[1] Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.[2]

The procedure for obtaining a declaratory judgment shall be in accordance with the Federal Rules of Civil Procedure.[3]

[FN1] 28 U.S.C.A. § 2201(a), which notes certain exceptions.

[FN2] 28 U.S.C.A. § 2202.

[FN3] Fed. R. Civ. P. 57.

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

I. Introduction
B. Statutory Provisions
2. Federal Declaratory Judgment Act

[Topic Summary Correlation Table References](#)

§ 11. Purpose of declaratory judgment remedy

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 24

The purpose of the Declaratory Judgment Act is to settle and afford relief from uncertainty and insecurity, with respect to rights, status, and other legal relations[1] and to settle actual controversies before they ripen into violations of law or a breach of duty[2] by providing an immediate forum for an adjudication of rights and obligations in an actual controversy where such controversy may be settled in its entirety and with expediency and economy.[3] The Declaratory Judgment Act affords an added remedy to one who is uncertain of his or her rights and who desires an early adjudication thereof without having to wait until his or her adversary should decide to sue and to act at his or her peril in the interim.[4] In other words, the purpose of declaratory action under the Act is to allow a party, who is reasonably at legal risk because of an unresolved dispute, to obtain judicial resolution of that dispute without having to await commencement of legal action by the other side[5] or expiration of the statute of limitations.[6]

It was the congressional intent to avoid the accrual of avoidable damages to a party not certain of its rights by affording that party an early adjudication without waiting until that party's adversary should see fit to begin suit after the damage had accrued.[7] Thus, the Declaratory Judgment Act allows individuals threatened with a taking to seek a declaration of the constitutionality of a disputed governmental action before potentially uncompensable damages are sustained.[8]

The Declaratory Judgment Act was not intended—

— to extend jurisdiction over an area not already covered or expressly forbidden.[9]

— to determine whether rights already adjudicated were adjudicated properly, instead of obtaining a declaration of rights not already determined.[10]

— to be an instrument used by those merely curious or dubious as to the true state of the law, no matter how meritorious they perceive their theory to be.[11]

- to enable a prospective defendant in a negligence action to obtain a declaration of nonliability.[12]
- to furnish a new choice of tribunals, or to draw into federal court the adjudication of causes properly cognizable by state courts.[13]
- to authorize suits against states in circumvention of the Eleventh Amendment.[14]

[FN1] *Town of Spencer v. Town of East Spencer*, 349 N.C. 241, 351 N.C. 124, 522 S.E.2d 297 (1999).

[FN2] *Disabled in Action of Pennsylvania v. Southeastern Pennsylvania Transp. Authority*, 539 F.3d 199 (3d Cir. 2008); *Central Hudson Gas & Elec. Corp. v. Benjamin F. Shaw Co.*, 465 F. Supp. 331 (S.D. N.Y. 1978).

[FN3] *Duggins v. Hunt*, 323 F.2d 746 (10th Cir. 1963).

[FN4] *Okpalobi v. Foster*, 190 F.3d 337 (5th Cir. 1999), on reh'g en banc, 244 F.3d 405 (5th Cir. 2001).

[FN5] *Capo, Inc. v. Dioptics Medical Products, Inc.*, 387 F.3d 1352 (Fed. Cir. 2004).

[FN6] *Sherwin-Williams Co. v. Holmes County*, 343 F.3d 383, 180 Ed. Law Rep. 501 (5th Cir. 2003).

[FN7] *U.S. v. Doherty*, 786 F.2d 491 (2d Cir. 1986); *Koch Engineering Co., Inc. v. Monsanto Co.*, 621 F. Supp. 1204 (E.D. Mo. 1985).

[FN8] *Eastern Enterprises v. Apfel*, 524 U.S. 498, 118 S. Ct. 2131, 141 L. Ed. 2d 451 (1998).

[FN9] *Di Benedetto v. Morgenthau*, 148 F.2d 223 (App. D.C. 1945).

[FN10] *U.S. v. Doherty*, 786 F.2d 491 (2d Cir. 1986); *Hurley v. Lindsay*, 207 F.2d 410 (4th Cir. 1953).

[FN11] *Fair v. Adams*, 233 F. Supp. 310 (N.D. Fla. 1964).

[FN12] *Cunningham Bros., Inc. v. Bail*, 407 F.2d 1165 (7th Cir. 1969).

[FN13] *Travelers Ins. Co. v. Davis*, 490 F.2d 536 (3d Cir. 1974); *National Union Fire Ins. Co. of Pittsburgh, Pa. v. Lippert Bros., Inc.*, 233 F. Supp. 650, 9 Fed. R. Serv. 2d 57.5, Case 1 (D. Neb. 1964).

[FN14] *U.S. v. State of S.C.*, 445 F. Supp. 1094 (D.S.C. 1977), judgment aff'd, 434 U.S. 1026, 98 S. Ct. 756, 54 L. Ed. 2d 775 (1978).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 11

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

I. Introduction
B. Statutory Provisions
2. Federal Declaratory Judgment Act

[Topic Summary Correlation Table References](#)

§ 12. Purpose of declaratory judgment remedy—Alternative to injunctive relief

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  41 to 47

Forms

[Federal Procedural Forms § 21:20](#) (Complaint—For declaratory judgment that federal agency has violated terms of consent decree, and for injunctive relief)

Under the Declaratory Judgment Act, declaratory relief may be available even though an injunction is not allowed.^[1] It was enacted for the additional purpose of dispelling difficulties involved with respect to injunctive relief against unconstitutional state statutes. Congress intended declaratory relief as an alternative to the stronger remedy of injunction to be utilized to test the constitutionality of state criminal statutes in cases where injunctive relief would be unavailable.^[2]

^[FN1] [Green v. Mansour](#), 474 U.S. 64, 106 S. Ct. 423, 88 L. Ed. 2d 371 (1985).

^[FN2] [Steffel v. Thompson](#), 415 U.S. 452, 94 S. Ct. 1209, 39 L. Ed. 2d 505 (1974).

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

I. Introduction
B. Statutory Provisions
2. Federal Declaratory Judgment Act

[Topic Summary Correlation Table References](#)

§ 13. Construction

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  23.1 to 26

The Declaratory Judgment Act should be liberally construed^[1] to accomplish its purpose of providing a speedy and inexpensive method of adjudicating disputes without invoking coercive remedies.^[2]

[FN1] *Beacon Const. Co., Inc. v. Matco Elec. Co., Inc.*, 521 F.2d 392 (2d Cir. 1975); *Sherwood Medical Industries, Inc. v. Deknatel, Inc.*, 512 F.2d 724 (8th Cir. 1975); *Johnson v. Wheeler*, 492 F. Supp. 2d 492, 44 A.L.R.6th 595 (D. Md. 2007).

[FN2] *Beacon Const. Co., Inc. v. Matco Elec. Co., Inc.*, 521 F.2d 392 (2d Cir. 1975); *Sherwood Medical Industries, Inc. v. Deknatel, Inc.*, 512 F.2d 724 (8th Cir. 1975).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 13

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

II. Availability of Declaratory Relief
A. In General

[Topic Summary Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  [3, 4 to 6, 45](#)

A.L.R. Library

A.L.R. Index, Declaratory Judgments

West's A.L.R. Digest, Declaratory Judgments  [3, 4 to 6, 45](#)

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS II A REF

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

II. Availability of Declaratory Relief
A. In General
1. Under State Acts

[Topic Summary Correlation Table References](#)

§ 14. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑4

A.L.R. Library

[Availability of declaratory judgment to determine validity of lease of real property, 60 A.L.R.2d 400](#)

[Declaratory relief with respect to unemployment compensation, 14 A.L.R.2d 826](#)

The granting or denial of declaratory relief is discretionary.[1] Even though a court may have jurisdiction of the subject matter and the parties, there is no absolute mandate compelling it to exercise that jurisdiction.[2] A court's decision in this regard will not be disturbed on appeal in the absence of a clear showing of abuse of that discretion.[3]

[FN1] *Kelner v. Woody*, 399 So. 2d 35 (Fla. 3d DCA 1981); *Thornton v. Carthon*, 114 So. 3d 554 (La. Ct. App. 2d Cir. 2013); *Cigarrilha v. City of Providence*, 64 A.3d 1208 (R.I. 2013).

[FN2] *Stahmer v. Marsh*, 202 Neb. 281, 275 N.W.2d 64 (1979).

A court is not required to hear a case on its merits before exercising its discretion to determine whether a declaratory judgment is the appropriate remedy. *Allstate Ins. Co. v. Firemen's Ins. Co.*, 1966-NMSC-120, 76 N.M. 430, 415 P.2d 553 (1966).

[FN3] *City of Santa Rosa v. Press Democrat*, 187 Cal. App. 3d 1315, 232 Cal. Rptr. 445 (1st Dist. 1986); *Wills v. O'Grady*, 86 Ill. App. 3d 775, 42 Ill. Dec. 522, 409 N.E.2d 17 (1st Dist. 1980); *State ex rel. Brennan v. Branch 24 of Circuit Court of Milwaukee County*, 104 Wis. 2d 72, 310 N.W.2d 629 (Ct. App. 1981).

rights reserved.

AMJUR DECLJUDS § 14

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

II. Availability of Declaratory Relief
A. In General
1. Under State Acts

[Topic Summary Correlation Table References](#)

§ 15. Proper exercise of discretion

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  5.1, 6

The courts' discretion with respect to the granting of declaratory judgments must be exercised judicially and cautiously,[1] with due regard to all the circumstances of the case.[2] Such exercise of discretion must not be arbitrary but based on good reason[3] and calculated to serve the purposes for which the legislation was enacted—namely, to afford relief from uncertainty and insecurity.[4] The courts must be alert to avoid imposition upon their jurisdiction through obtaining futile or premature interventions, especially in the field of public law, and should exercise a maximum of caution where a ruling is sought that would reach far beyond the particular case.[5] However, the discretion of the court with regard to declaratory relief is not unlimited, and where a complaint sets forth facts and circumstances showing that a declaratory judgment is entirely appropriate, the court may not properly refuse to assume jurisdiction.[6]

[FN1] *Blanco v. General Motors Acceptance Corp.*, 180 Neb. 365, 143 N.W.2d 257 (1966).

[FN2] *National Shawmut Bank of Boston v. Morey*, 320 Mass. 492, 70 N.E.2d 316, 174 A.L.R. 871 (1946).

[FN3] *Alpha Rho Zeta of Lambda Chi Alpha, Inc. v. Inhabitants of City of Waterville*, 477 A.2d 1131, 18 Ed. Law Rep. 648 (Me. 1984); *Eastern Fine Paper, Inc. v. Garriga Trading Co., Inc.*, 457 A.2d 1111 (Me. 1983).

[FN4] *Missouri Property Ins. Placement Facility v. McRoberts*, 598 S.W.2d 146 (Mo. Ct. App. 1978).

[FN5] *Blanco v. General Motors Acceptance Corp.*, 180 Neb. 365, 143 N.W.2d 257 (1966).

[FN6] *Meyer v. Sprint Spectrum L.P.*, 45 Cal. 4th 634, 88 Cal. Rptr. 3d 859, 200 P.3d 295 (2009).

rights reserved.

AMJUR DECLJUDS § 15

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

II. Availability of Declaratory Relief
A. In General
1. Under State Acts

[Topic Summary Correlation Table References](#)

§ 16. Refusal of relief

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 5.1, 6

Where a case is properly before the trial court, under a complaint which is legally sufficient and sets forth facts and circumstances showing that a declaratory adjudication is entirely appropriate, the trial court may not properly refuse to assume jurisdiction.[1] However, declaratory relief may be refused in the discretion of the trial court if it appears that the determination would not terminate the uncertainty that gave rise to the proceeding, would result in a piecemeal determination of the dispute,[2] or that it is not necessary or proper at the time and under all the circumstances.[3] The fact that the plaintiff was in pari delicto is also an element which may properly be considered by the trial court as sufficient reason for declining to grant declaratory relief.[4] Declaratory relief is inappropriate where the only issue involved is purely a question of fact[5] or where it would constitute a collateral attack on a final judgment.[6]

[FN1] § 16.

[FN2] *City of Rochester v. Vanderlinde Elec. Corp.*, 56 A.D.2d 185, 392 N.Y.S.2d 167 (4th Dep't 1977)

.

As to terminability of controversy, see § 23.

[FN3] *Moss v. Moss*, 20 Cal. 2d 640, 128 P.2d 526, 141 A.L.R. 1422 (1942).

As to refusing declaratory relief where another adequate remedy exists, see § 47.

As to where another action is pending between the same parties in which all issues may be determined at the time of the commencement of the declaratory judgment suit, see § 36.

[FN4] *Moss v. Moss*, 20 Cal. 2d 640, 128 P.2d 526, 141 A.L.R. 1422 (1942).

[FN5] *Food Fair Stores, Inc. v. Vanguard Inv. Co. LTD.*, 298 So. 2d 515 (Fla. 3d DCA 1974); *Emmco Ins. Co. v. Burrows*, 419 S.W.2d 665 (Tex. Civ. App. Tyler 1967).

[FN6] *Williams v. Johnson*, 2006 WL 496826 (Ark. 2006); *Oregonian Publishing Co., LLC v. Waller*, 253 Or. App. 123, 293 P.3d 1046 (2012), review denied, 353 Or. 714, 303 P.3d 943 (2013).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 16

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

II. Availability of Declaratory Relief
A. In General
2. Under Federal Act

[Topic Summary Correlation Table References](#)

§ 17. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 5.1, 6

Declaratory relief is discretionary,[1] both by its very nature and under the plain language of the Declaratory Judgment Act.[2] It is an enabling Act, which confers discretion on the courts rather than an absolute right upon the litigant.[3] It gives federal courts competence to make declarations of rights but does not impose a duty to do so.[4] The question of whether injunctive or declaratory relief predominates is a matter for the sound discretion of the court.[5] A declaratory judgment, like other forms of equitable relief, should be granted only as a matter of judicial discretion, exercised in the public interest.[6]

In considering whether to exercise its discretion to retain jurisdiction over a declaratory judgment action, a district court should avoid needless determination of state law issues, it should discourage litigants from filing declaratory actions as means of forum shopping, and it should avoid duplicative litigation.[7] A district court has the discretion to refuse declaratory relief when—

- the relief sought will not terminate the controversy giving rise to the proceedings.[8]
- the action is being used for procedural fencing.[9]
- an alternative remedy is better or more effective.[10]
- another pending action will dispose of all controverted issues.[11]
- the relief is sought in anticipation of trial on the issue in a court of coordinate jurisdiction.[12]

Even the convenience of parties and witnesses has traditionally been considered in determining whether to hear a declaratory judgment action.[13]

CUMULATIVE SUPPLEMENT

Cases:

A forum's convenience for witnesses and production of evidence is irrelevant in determining whether procedural fencing has occurred, for purposes of determining whether exercising jurisdiction over a declaratory judgment action is appropriate under first-to-file rule. 28 U.S.C.A. § 2201(a). [Catholic Health Partners v.](#)

CareLogistics, LLC, 973 F. Supp. 2d 787 (N.D. Ohio 2013).

[END OF SUPPLEMENT]

[FN1] Bilida v. McCleod, 211 F.3d 166 (1st Cir. 2000); English v. District of Columbia, 815 F. Supp. 2d 254 (D.D.C. 2011), judgment aff'd, 717 F.3d 968 (D.C. Cir. 2013); Neumont v. Monroe County, Florida, 242 F. Supp. 2d 1265 (S.D. Fla. 2002); Bituminous Cas. Corp. v. Combs Contracting Inc., 236 F. Supp. 2d 737 (E.D. Ky. 2002); Dow Jones & Co., Inc. v. Harrods, Ltd., 237 F. Supp. 2d 394 (S.D. N.Y. 2002), judgment aff'd, 346 F.3d 357 (2d Cir. 2003).

[FN2] El Dia, Inc. v. Hernandez Colon, 963 F.2d 488 (1st Cir. 1992).

[FN3] DeNovellis v. Shalala, 124 F.3d 298 (1st Cir. 1997); James River Ins. Co. v. Impact Strategies, Inc., 699 F. Supp. 2d 1086 (E.D. Mo. 2010); Dow Jones & Co., Inc. v. Harrods, Ltd., 237 F. Supp. 2d 394 (S.D. N.Y. 2002), judgment aff'd, 346 F.3d 357 (2d Cir. 2003).

[FN4] Public Affairs Associates, Inc. v. Rickover, 369 U.S. 111, 82 S. Ct. 580, 7 L. Ed. 2d 604 (1962); Northland Ins. Co. v. Top Rank Trucking of Kissimmee, Inc., 823 F. Supp. 2d 1293 (M.D. Fla. 2011).

[FN5] Morgan v. United Parcel Service of America, Inc., 169 F.R.D. 349 (E.D. Mo. 1996).

[FN6] Public Affairs Associates, Inc. v. Rickover, 369 U.S. 111, 82 S. Ct. 580, 7 L. Ed. 2d 604 (1962).

[FN7] American Cas. Co. of Reading, Pennsylvania v. Krieger, 181 F.3d 1113 (9th Cir. 1999).

[FN8] Quiring v. GEICO General Ins. Co., 953 N.E.2d 119 (Ind. Ct. App. 2011); Converge Services Group, LLC v. Curran, 383 Md. 462, 860 A.2d 871 (2004).

[FN9] POM Wonderful LLC v. F.T.C., 894 F. Supp. 2d 40 (D.D.C. 2012); Anderson Living Trust v. ConocoPhillips Co., LLC, 2013 WL 3456913 (D.N.M. 2013).

[FN10] Mid-Continent Cas. Co. v. Village at Deer Creek Homeowners Ass'n, Inc., 685 F.3d 977 (10th Cir. 2012); Hartford Cas. Ins. Co. v. Bluemile, Inc., 2013 WL 1090329 (S.D. Ohio 2013).

[FN11] § 36.

[FN12] Januszewski v. Manson, 525 F. Supp. 805 (D. Conn. 1981).

[FN13] Mission Ins. Co. v. Puritan Fashions Corp., 706 F.2d 599 (5th Cir. 1983).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 17

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

II. Availability of Declaratory Relief
A. In General
2. Under Federal Act

[Topic Summary Correlation Table References](#)

§ 18. Control of state action

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  5.1

While the extent to which the declaratory judgment procedure may be used in the federal courts to control state action lies in the sound discretion of the Supreme Court, it is of controlling significance that it is in the public interest to avoid the needless determination of constitutional questions and the needless obstruction to the domestic policy of a state by forestalling state action in construing and applying its own statutes.[1] Thus, where an applicable state law is uncertain or undetermined, the district courts should be particularly reluctant to entertain declaratory judgment actions.[2] Also, the Federal Act may not be used simply to remove a controversy from the forum where it properly belongs, and it is an abuse of discretion for a district court to accept jurisdiction over a controversy in such circumstances.[3]

[FN1] *Alabama State Federation of Labor, Local Union No. 103, United Broth. of Carpenters and Joiners of America v. McAdory*, 325 U.S. 450, 65 S. Ct. 1384, 89 L. Ed. 1725 (1945).

[FN2] *State Auto Ins. Companies v. Summy*, 234 F.3d 131 (3d Cir. 2000), as amended, (Jan. 30, 2001).

[FN3] *Topp-Cola Co. v. Coca-Cola Co.*, 314 F.2d 124 (2d Cir. 1963).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 18

END OF DOCUMENT


American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

II. Availability of Declaratory Relief
A. In General
2. Under Federal Act

[Topic Summary Correlation Table References](#)

§ 19. Appropriate courts

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  3

"Any court of the United States" may render a declaratory judgment.[1] The term "court of the United States" includes the Supreme Court of the United States, courts of appeals, district courts, the court of international trade, and any court created by Act of Congress the judges of which are entitled to hold office during good behavior.[2] The Federal Declaratory Judgment Act does not apply to the District Court of the Virgin Islands.[3] The district court cannot decline to entertain a declaratory judgment action as a matter of whim or personal disinclination.[4]

[FN1] § 10.

[FN2] 28 U.S.C.A. § 451.

[FN3] *Companion Assurance Co. v. Alliance Assurance Co., Ltd.*, 21 V.I. 34, 585 F. Supp. 1382 (D.V.I. 1984).

[FN4] *Public Affairs Associates, Inc. v. Rickover*, 369 U.S. 111, 82 S. Ct. 580, 7 L. Ed. 2d 604 (1962).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 19

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

II. Availability of Declaratory Relief
A. In General
2. Under Federal Act

[Topic Summary Correlation Table References](#)

§ 20. Diversity cases

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑45

Only in exceptional circumstances should a district court stay or dismiss a declaratory judgment action subject to parallel state litigation even if diversity of citizenship is the only jurisdictional foundation.[1] Where diversity of citizenship is the jurisdictional basis of a declaratory judgment action, the federal court[2] will apply state law on substantive issues.[3] However, federal law determines whether a federal court can and may properly render a declaratory judgment.[4] It is immaterial that the declaratory judgment remedy which may be given by the federal courts in a diversity case is not available in the state courts of the forum.[5]

State law policies restricting declaratory judgments in insurance cases have been followed in federal court actions based on diversity jurisdiction.[6] However, a state law forbidding declaratory judgment actions brought to determine the liability of insurers does not prevent the federal court from entertaining such a declaratory judgment action.[7]

[FN1] *BASF Corp. v. Symington*, 50 F.3d 555 (8th Cir. 1995).

[FN2] *Erie R. Co. v. Tompkins*, 304 U.S. 64, 58 S. Ct. 817, 82 L. Ed. 1188, 114 A.L.R. 1487 (1938).

[FN3] *Stevens Industries, Inc. v. Maryland Cas. Co.*, 391 F.2d 411 (5th Cir. 1968).

[FN4] *Farmers Alliance Mut. Ins. Co. v. Jones*, 570 F.2d 1384 (10th Cir. 1978).

[FN5] *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 70 S. Ct. 876, 94 L. Ed. 1194 (1950).

[FN6] *American Fidelity Fire Ins. Co. v. Hood*, 37 F.R.D. 17, 9 Fed. R. Serv. 2d 13A.11, Case 6 (E.D. S.C. 1965) (state policy barring reference to liability insurance in tort cases).

[FN7] *Farmers Alliance Mut. Ins. Co. v. Jones*, 570 F.2d 1384 (10th Cir. 1978).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 20

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

II. Availability of Declaratory Relief
B. Justiciability

[Topic Summary Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 [10](#), [47](#), [61](#) to [69](#)

A.L.R. Library

A.L.R. Index, Declaratory Judgments

West's A.L.R. Digest, Declaratory Judgments 🔑 [10](#), [47](#), [61](#) to [69](#)

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS II B REF

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

II. Availability of Declaratory Relief
B. Justiciability
1. Generally

[Topic Summary Correlation Table References](#)

§ 21. Standing

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑61

Forms

[Am. Jur. Pleading and Practice Forms, Declaratory Judgments § 41](#) (Motion—To dismiss action—No basis for declaratory relief—Failure of complaint to allege justiciable controversy)

A declaratory judgment or injunction can issue only when the constitutional standing requirements of a case or controversy are met.[1] A plaintiff must establish standing by showing that there is a real, justiciable controversy[2]—that is, a substantial controversy, between parties having adverse interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.[3] The parties must be proper parties[4] so that the courts will not be asked to decide ill-defined controversies over constitutional issues, or cases which are of a hypothetical or abstract character,[5] and the plaintiff must demonstrate a direct stake in the outcome of the suit.[6]

Observation:

As a general principle, citizen-taxpayer status does not confer standing to challenge the issuance of state bond acts by a declaratory judgment action.[7]

The question of standing is whether the litigant is entitled to have the court decide the merits of the dispute, and this inquiry involves both constitutional limitations on federal court jurisdiction and prudential limitations on its exercise.[8] The constitutional requirements for standing are not satisfied merely because a party requests a court of the United States to declare its legal rights.[9] Although the standing requirements under a declaratory judgment statute should be liberally construed, there are limits to the matters that can be heard in an action for a declaratory judgment.[10] Also, although declaratory judgments are frequently sought in advance of the full harm expected, an action seeking a declaratory judgment must still present a justiciable controversy rather than abstract, hypothetical, or contingent questions in order for constitutional standing to exist.[11] In cases in which plaintiff seeks injunctive or declaratory relief only, standing will not lie if adjudication rests upon contingent future events that may not occur as anticipated or indeed may not occur at all.[12]

[FN1] *St. Thomas—St. John Hotel & Tourism Ass'n, Inc. v. Government of U.S. Virgin Islands*, 218 F.3d 232 (3d Cir. 2000).

Until environmental organizations could affirmatively establish standing, no court could resolve the issue of appropriateness of declaratory relief in that no case or controversy existed. *Natural Resources Defense Council, Inc. v. Watkins*, 954 F.2d 974 (4th Cir. 1992).

[FN2] *Moore v. Middletown*, 133 Ohio St. 3d 55, 2012-Ohio-3897, 975 N.E.2d 977 (2012).

[FN3] *Scott v. Pasadena Unified School Dist.*, 306 F.3d 646, 170 Ed. Law Rep. 64 (9th Cir. 2002); *Goleta National Bank v. O'Donnell*, 239 F. Supp. 2d 745 (S.D. Ohio 2002).

As to requirement of actual controversy, generally, see §§ 28 to 35.

[FN4] *Wisconsin State Emp. Ass'n, Council 24, AFSCME, AFL-CIO v. Wisconsin Natural Resources Bd.*, 298 F. Supp. 339, 13 Fed. R. Serv. 2d 525 (W.D. Wis. 1969).

A rural distributor of satellite television programming lacked prudential standing to maintain its declaratory relief claims against a national provider of satellite television programming, seeking to assert a telecommunications cooperative's rights under an agreement between the provider and the cooperative, where the cooperative had settled its disputes with the provider and was no longer a party to the litigation, and the distributor was not a third-party beneficiary to the contract. *Pegasus Satellite Television, Inc. v. DirecTV, Inc.*, 318 F. Supp. 2d 968 (C.D. Cal. 2004).

A motorist who brought a personal injury action against another motorist involved in an automobile accident and the other motorist's employer lacked standing to bring a declaratory judgment action against the insurer for the other motorist's employer for a determination that a commercial general liability insurance policy provided coverage for the accident, as the motorist was a stranger to the insurance contract and did not have a judgment against the other motorist, so that there was no actual, justiciable controversy between the motorist and the insurer about the insurer's obligation to pay based on the insurance contract between the insurer and the other motorist's employer. *Knight ex rel. Ellis v. Miller*, 2008 OK 81, 195 P.3d 372 (Okla. 2008).

[FN5] *Wisconsin State Emp. Ass'n, Council 24, AFSCME, AFL-CIO v. Wisconsin Natural Resources Bd.*, 298 F. Supp. 339, 13 Fed. R. Serv. 2d 525 (W.D. Wis. 1969).

[FN6] *Board of Educ. of Ottawa Tp. High School Dist. 140 v. Spellings*, 517 F.3d 922, 230 Ed. Law Rep. 159 (7th Cir. 2008).

The State of Oregon had standing under the Declaratory Judgment Act and the Administrative Procedure Act to challenge a directive of the United States Attorney General, indicating that physicians who assist suicide of terminally ill patients pursuant to Oregon's Death with Dignity Act would be violating the Federal Controlled Substances Act, as Oregon had alleged and proved sufficient injury to its sovereign and legitimate interest in the continued enforceability of its own statutes. *Oregon v. Ashcroft*, 192 F. Supp. 2d 1077 (D. Or. 2002).

[FN7] *Schulz v. New York State Executive*, 92 N.Y.2d 1, 677 N.Y.S.2d 1, 699 N.E.2d 360 (1998).

[FN8] *Warth v. Seldin*, 422 U.S. 490, 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1975).

[FN9] *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 102 S. Ct. 752, 70 L. Ed. 2d 700 (1982).

[FN10] *Enos v. Secretary of Environmental Affairs*, 432 Mass. 132, 731 N.E.2d 525 (2000).

[FN11] *St. Thomas—St. John Hotel & Tourism Ass'n, Inc. v. Government of U.S. Virgin Islands*, 218 F.3d 232 (3d Cir. 2000).

[FN12] *Pryor v. National Collegiate Athletic Ass'n.*, 288 F.3d 548, 164 Ed. Law Rep. 587 (3d Cir. 2002).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 21

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

II. Availability of Declaratory Relief
B. Justiciability
1. Generally

[Topic Summary Correlation Table References](#)

§ 22. Standing—Constitutional challenges

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑62

Only those to whom the statute or regulation applies and who are adversely affected can question its constitutional validity in declaratory judgment proceedings.[1] Although past wrongs are evidence bearing on whether the plaintiffs are threatened with future injury under the challenged government program, past harm does not of itself amount to the real and immediate threat of injury necessary to make out a case or controversy.[2] The interest must be of a personal and not of an official nature.[3] A palpable economic injury is sufficient to lay the basis for standing to sue, with or without a specific statutory provision for judicial review,[4] and allegations that a state licensing statute has the effect of precluding the petitioner from practicing his profession and thereby violates rights secured by the Federal Constitution establish standing.[5] Representational standing is allowed in declaratory judgment suits where the association shows that its members have or will suffer immediate or threatened injury as a result of the challenged action, that the members could bring the same suit individually, and that the nature of the claim and relief requested do not require the individual participation of the injured parties for a proper resolution.[6]

In order to hold that a party has standing to seek relief in a federal court for violation of his or her constitutional rights, it is not necessary to decide whether such party will ultimately be entitled to any relief.[7]

[FN1] *Alabama State Federation of Labor, Local Union No. 103, United Broth. of Carpenters and Joiners of America v. McAdory*, 325 U.S. 450, 65 S. Ct. 1384, 89 L. Ed. 1725 (1945); *Maxfield v. State*, 2013 WY 14, 294 P.3d 895 (Wyo. 2013) (Secretary of State sued to invalidate a term limit statute which he claimed violated his right to be a candidate).

[FN2] *Biggs v. Block*, 629 F. Supp. 1574 (E.D. N.Y. 1986) (plaintiffs, no longer eligible for food stamps, contended that declaratory relief directing a change in eligibility policy would benefit them should they have to reapply for public assistance).

[FN3] *Braxton County Court v. State of West Virginia*, 208 U.S. 192, 28 S. Ct. 275, 52 L. Ed. 450 (1908).

[FN4] *Franks v. Bowman Transp. Co., Inc.*, 424 U.S. 747, 96 S. Ct. 1251, 47 L. Ed. 2d 444 (1976).

[FN5] *Heisse v. State of Vt.*, 519 F. Supp. 36 (D. Vt. 1980).

[FN6] *Gniotek v. City of Philadelphia*, 630 F. Supp. 827 (E.D. Pa. 1986), judgment aff'd, 808 F.2d 241 (3d Cir. 1986).

[FN7] *Baker v. Carr*, 369 U.S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 22

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

II. Availability of Declaratory Relief
B. Justiciability
1. Generally

[Topic Summary Correlation Table References](#)

§ 23. Settlement of controversy

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑62

Forms

[Am. Jur. Pleading and Practice Forms, Declaratory Judgments § 45](#) (Answer—Defense—Dismissal of complaint—Present action will not terminate controversy)

The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceedings.[1] This principle is generally discretionary[2] so that a court is not bound to withhold declaratory relief even where such relief might not terminate the controversy.[3] Declaratory relief is appropriate even though it may be preliminary to further litigation.[4] As such, declaratory relief need not be withheld simply because an action for damages is contemplated.[5] However, a declaratory judgment should not be rendered if it will not finally settle an actual controversy[6] or be of some practical help in ending the controversy[7] or stabilizing disputed legal relations.[8] A court may not grant declaratory relief unless it is convinced that its judgment will end the litigation and fix the rights of the parties.[9] Moreover, declaratory judgment may be appropriate only if specific relief can be given in a decision which will be res judicata as to the issues presented.[10]

[FN1] Unif. Declaratory Judgments Act § 6.

[FN2] *Morial v. Guste*, 365 So. 2d 289 (La. Ct. App. 4th Cir. 1978), writ denied, 365 So. 2d 1375 (La. 1978) and writ denied, 365 So. 2d 1375 (La. 1978).

[FN3] *Wright v. Thompson*, 254 Iowa 342, 117 N.W.2d 520 (1962).

As to the discretion of courts as to declaratory relief, see § 15.

[FN4] *Kronovet v. Lipchin*, 288 Md. 30, 415 A.2d 1096, 16 A.L.R.4th 942 (1980).

[FN5] *Mid-Southern Toyota, Limited v. Bug's Imports, Inc.*, 453 S.W.2d 544 (Ky. 1970).

[FN6] *Reyes v. Prince George's County*, 281 Md. 279, 380 A.2d 12 (1977).

[FN7] *Reyes v. Prince George's County*, 281 Md. 279, 380 A.2d 12 (1977); *Pennsylvania State Lodge, Fraternal Order of Police v. Com., Dept. of Conservation and Natural Resources*, 909 A.2d 413 (Pa. Commw. Ct. 2006), order *aff'd*, 592 Pa. 304, 924 A.2d 1203 (2007).

[FN8] *Reyes v. Prince George's County*, 281 Md. 279, 380 A.2d 12 (1977).

[FN9] *People ex rel. Inter-Church Temperance Movement of Colo. v. Baker*, 133 Colo. 398, 297 P.2d 273 (1956).

[FN10] *Ferguson Police Officers Ass'n v. City of Ferguson*, 670 S.W.2d 921 (Mo. Ct. App. E.D. 1984).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 23

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

II. Availability of Declaratory Relief
B. Justiciability
1. Generally

[Topic Summary Correlation Table References](#)

§ 24. Settlement of controversy—Federal court proceedings

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑62

Forms

[Am. Jur. Pleading and Practice Forms, Declaratory Judgments § 45](#) (Answer—Defense—Dismissal of complaint—Present action will not terminate controversy)

Declaratory relief is available to settle actual controversies before they ripen into violations of a law or a breach of duty.[1] The declaratory judgment procedure may be used in federal courts only where the interests of justice will be advanced, and an adequate and effective judgment may be rendered.[2] Declaratory relief is appropriate when the judgment will serve a useful purpose in clarifying and settling the legal relations in issue and when it will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding.[3] The trial court may decline to grant declaratory relief when it will not be effective in settling the controversy.[4] In determining whether to decide a declaratory judgment action, nonexclusive factors which district courts should consider are:[5]

- (1) whether there is a pending state action in which all of the matters in controversy may be fully litigated;
- (2) whether the plaintiff filed suit in anticipation of a lawsuit filed by the defendant;
- (3) whether the plaintiff engaged in forum shopping in bringing the suit;
- (4) whether possible inequities exist in allowing the declaratory plaintiff to gain precedence in time or to change forums;
- (5) whether the federal court is a convenient forum for the parties and witnesses;
- (6) whether retaining the lawsuit in federal court would serve the purposes of judicial economy; and
- (7) whether the federal court is being called on to construe a state judicial decree involving the same parties

and entered by the court before whom the parallel state suit between the same parties is pending.

Where there is no claimed continuing violation of federal law or any threat of future violation, a declaratory judgment would be useful in resolving the dispute over the past lawfulness of state officials' action only if it might be offered in state court proceedings as res judicata on the issue of liability, leaving to the state courts only a form of accounting proceeding whereby damages would be computed; however, the issuance of a declaratory judgment in these circumstances would have the same effect as an award of damages, which would be prohibited under the Eleventh Amendment.[6]

[FN1] *Disabled in Action of Pennsylvania v. Southeastern Pennsylvania Transp. Authority*, 539 F.3d 199 (3d Cir. 2008).

[FN2] *Alabama State Federation of Labor, Local Union No. 103, United Broth. of Carpenters and Joiners of America v. McAdory*, 325 U.S. 450, 65 S. Ct. 1384, 89 L. Ed. 1725 (1945).

[FN3] *Guerra v. Sutton*, 783 F.2d 1371 (9th Cir. 1986); *Channel One Systems, Inc. v. Connecticut Dept. of Public Utility Control*, 639 F. Supp. 188 (D. Conn. 1986).

[FN4] *Colyar v. Third Judicial Dist. Court for Salt Lake County*, 469 F. Supp. 424 (D. Utah 1979).

[FN5] *Poly-America, L.P. v. Stego Industries, L.L.C.*, 694 F. Supp. 2d 600, 76 Fed. R. Serv. 3d 168 (N.D. Tex. 2010).

[FN6] *Green v. Mansour*, 474 U.S. 64, 106 S. Ct. 423, 88 L. Ed. 2d 371 (1985).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 24

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

II. Availability of Declaratory Relief
B. Justiciability
1. Generally

[Topic Summary Correlation Table References](#)

§ 25. Political questions

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑62

A.L.R. Library

[Construction and Application of Political Question Doctrine by State Courts, 9 A.L.R.6th 177](#)

[Application of Political Question Doctrine by U.S. Supreme Court, 75 A.L.R. Fed. 2d 1](#)

The political question doctrine, under which the judiciary may defer certain questions to the other branches of government,[1] applies to declaratory judgment actions as an aspect of the broader question of justiciability.[2] In determining whether the issues raised in a declaratory judgment suit fall within the category of "political questions," the dominant considerations are the appropriateness of attributing finality to the action of the political departments and the lack of satisfactory criteria for a judicial determination.[3] A request for declaratory relief may be considered independently of whether other forms of relief are appropriate, and the court may choose to grant declaratory relief even if it would not issue an injunction or mandamus because the issues impinge on the political functions of another department of government.[4]

[FN1] Am. Jur. 2d, Federal Courts § 11.

[FN2] *In re Old Cutters, Inc.*, 488 B.R. 130 (Bankr. D. Idaho 2012); *Morr-Fitz, Inc. v. Blagojevich*, 231 Ill. 2d 474, 327 Ill. Dec. 45, 901 N.E.2d 373 (2008); *Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827 (Tenn. 2008).

[FN3] *Powell v. McCormack*, 395 U.S. 486, 89 S. Ct. 1944, 23 L. Ed. 2d 491 (1969).

[FN4] *Powell v. McCormack*, 395 U.S. 486, 89 S. Ct. 1944, 23 L. Ed. 2d 491 (1969).

As to the grant of both mandamus and prohibition or injunctive or declaratory relief along with manda-

mus relief, see [Am. Jur. 2d, Mandamus § 454](#).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 25

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

II. Availability of Declaratory Relief
B. Justiciability
1. Generally

[Topic Summary Correlation Table References](#)

§ 26. Matters previously adjudicated

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 47

Generally, judgments and decrees speak for themselves, and declaratory judgment proceedings are not available to reargue evidentiary issues which could have been, or were, raised in a prior trial,[1] collaterally attack the judgment of a court of competent jurisdiction,[2] to construe and clarify a judgment[3] or to modify or declare rights thereunder.[4] A litigant may not use declaratory judgment proceedings to determine whether his or her prospective conduct would violate the terms of an injunction.[5] Declaratory proceedings were not intended to and should not serve as a substitute for appellate review or as a belated appeal.[6]

[FN1] *Grant v. State*, 2007 WL 1289606 (Ark. 2007).

[FN2] *SE Technologies, Inc. v. Summit Elec. Supply, Inc.*, 392 F. Supp. 2d 399, 63 Fed. R. Serv. 3d 255 (D. Conn. 2005); *Schwamm v. Superior Court In and For Pima County*, 4 Ariz. App. 480, 421 P.2d 913 (1966).

[FN3] *Fertitta v. Brown*, 252 Md. 594, 251 A.2d 212 (1969).

[FN4] *Fertitta v. Brown*, 252 Md. 594, 251 A.2d 212 (1969).

[FN5] *J. Greenebaum Tanning Co. v. N.L.R.B.*, 129 F.2d 487 (C.C.A. 7th Cir. 1942).

[FN6] *Fertitta v. Brown*, 252 Md. 594, 251 A.2d 212 (1969).

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

II. Availability of Declaratory Relief
B. Justiciability
1. Generally

[Topic Summary Correlation Table References](#)

§ 27. Disputed questions of fact

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  10

A.L.R. Library

[Right to jury trial in action for declaratory relief in state court, 33 A.L.R.4th 146](#)

[Declaratory relief with respect to unemployment compensation, 14 A.L.R.2d 826](#)

Forms

[Am. Jur. Pleading and Practice Forms, Declaratory Judgments § 40](#) (Demurrer or motion—No basis for declaratory relief—Complaint presents only question of fact properly determined by jury in regular action)

While a controversy is not automatically withdrawn from the operation of such laws merely because it involves disputed questions of fact,[1] declaratory decree statutes are not designed for the purpose of establishing purely factual issues,[2] such as the existence or denial of due process,[3] and are not available where the object of the proceedings is to try such fact as a determinative issue[4] rather than to seek a construction of definite stated rights, status, and other relations.[5] The courts may, and often do, in their discretion refuse a declaration which can only be made after a judicial investigation of disputed facts,[6] especially where the disputed questions of fact will or should be the subject of judicial investigation in a regular action.[7] The existence of unresolved questions of fact may also, in an appropriate case, require the plaintiff to exhaust applicable administrative remedies.[8]

[FN1] [Hobgood v. Black, 144 Ga. App. 448, 241 S.E.2d 60 \(1978\).](#)

[FN2] [Kelner v. Woody, 399 So. 2d 35 \(Fla. 3d DCA 1981\); Raynes v. City of Great Falls, 215 Mont. 114, 696 P.2d 423 \(1985\).](#)

[FN3] *Raynes v. City of Great Falls*, 215 Mont. 114, 696 P.2d 423 (1985).

[FN4] *Maryland Enterprise, LLC v. U.S.*, 93 Fed. Cl. 658 (2010).

[FN5] *Central Foundry Co. v. Benderson*, 284 Ala. 144, 223 So. 2d 266 (1969).

[FN6] *U.S. Fidelity & Guaranty Co. v. Kenosha Inv. Co.*, 369 Mich. 481, 120 N.W.2d 190 (1963).

[FN7] *Ennis v. Casey*, 72 Idaho 181, 238 P.2d 435, 28 A.L.R.2d 952 (1951); *Tarlton v. Kaufman*, 2008 MT 462, 348 Mont. 178, 199 P.3d 263 (2008).

[FN8] *Bosonetto v. Town of Richmond*, 163 N.H. 736, 48 A.3d 973 (2012).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 27

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

II. Availability of Declaratory Relief
B. Justiciability
2. Actual Controversy

[Topic Summary Correlation Table References](#)

§ 28. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  62

A.L.R. Library

[Availability of declaratory judgment to determine validity of lease of real property, 60 A.L.R.2d 400](#)

[Extent to which principles of res judicata are applicable to judgments in actions for declaratory relief, 10 A.L.R.2d 782](#)

Forms

[Am. Jur. Pleading and Practice Forms, Declaratory Judgments § 41](#) (Motion—To dismiss action—No basis for declaratory relief—Failure of complaint to allege justiciable controversy)

A declaratory judgment action cannot be brought unless an actual,[1] justiciable[2] controversy exists, between parties having opposing interests that are direct and substantial[3]—a controversy over present rights, duties, and liabilities,[4] of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.[5]] As the rule has otherwise been stated, a justiciable controversy exists when:[6]

- (1) a claim of right is asserted against one who has an interest in contesting it;
- (2) the controversy is between persons whose interests are adverse;
- (3) the party seeking relief has a legally protectable interest in the controversy; and
- (4) the issue involved is ripe for a judicial determination.[7]

A controversy must involve something more than a mere difference of opinion;[8] it must involve persons adversely interested in matters in respect of which a declaration is sought.[9] The controversy must be capable of being affected by the declaration.[10] Moreover, there is no justiciable controversy sufficient to sustain a de-

claratory judgment action unless the action includes all persons who have or claim an interest affected by the declaration.^[11]

[FN1] *Leitch v. Fleming*, 291 Ga. 669, 732 S.E.2d 401 (2012); *Libertarian Ass'n of Massachusetts v. Secretary of Com.*, 462 Mass. 538, 969 N.E.2d 1095 (2012); *Conner v. North Carolina Council of State*, 365 N.C. 242, 716 S.E.2d 836 (2011); *Hunters, Anglers and Trappers Ass'n of Vermont, Inc. v. Winooski Valley Park Dist.*, 181 Vt. 12, 2006 VT 82, 913 A.2d 391 (2006); *Charlottesville Area Fitness Club Operators Ass'n v. Albemarle County Bd. of Sup'rs*, 285 Va. 87, 737 S.E.2d 1 (2013).

[FN2] *City of Atlanta v. Hotels.com, L.P.*, 285 Ga. 231, 674 S.E.2d 898 (2009); *Mercy Hospitals East Communities v. Missouri Health Facilities Review Committee*, 362 S.W.3d 415 (Mo. 2012); *City of Broken Arrow v. Bass Pro Outdoor World, L.L.C.*, 2011 OK 1, 250 P.3d 305 (Okla. 2011), as corrected, (Jan. 19, 2011); *Hunters, Anglers and Trappers Ass'n of Vermont, Inc. v. Winooski Valley Park Dist.*, 181 Vt. 12, 2006 VT 82, 913 A.2d 391 (2006); *Olson v. Town of Cottage Grove*, 2008 WI 51, 309 Wis. 2d 365, 749 N.W.2d 211 (2008).

[FN3] *City of Broken Arrow v. Bass Pro Outdoor World, L.L.C.*, 2011 OK 1, 250 P.3d 305 (Okla. 2011), as corrected, (Jan. 19, 2011).

[FN4] *Foley v. Com.*, 306 S.W.3d 28 (Ky. 2010).

[FN5] *Butler v. Dowd*, 979 F.2d 661 (8th Cir. 1992).

[FN6] *Olson v. Town of Cottage Grove*, 2008 WI 51, 309 Wis. 2d 365, 749 N.W.2d 211 (2008).

[FN7] Ripeness, generally, see § 31.

[FN8] *Barbour v. Little*, 37 N.C. App. 686, 247 S.E.2d 252 (1978); *Lister v. Board of Regents of University Wisconsin System*, 72 Wis. 2d 282, 240 N.W.2d 610 (1976).

[FN9] *Hatt v. Anderson*, 297 Md. 42, 464 A.2d 1076 (1983).

[FN10] *Yow v. Crater*, 526 F. Supp. 240 (M.D. N.C. 1981); *Kaske v. City of Rockford*, 96 Ill. 2d 298, 70 Ill. Dec. 841, 450 N.E.2d 314 (1983).

[FN11] *Stanley v. Mueller*, 211 Or. 198, 315 P.2d 125, 71 A.L.R.2d 715 (1957).

As to necessary parties, generally, see §§ 203 to 216.

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 28

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

II. Availability of Declaratory Relief
B. Justiciability
2. Actual Controversy

[Topic Summary Correlation Table References](#)

§ 29. Actual controversy under the Federal Act

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  61 to 69

Forms

[Am. Jur. Pleading and Practice Forms, Declaratory Judgments § 37](#) (Complaint in federal court—Allegation—Existence of actual controversy)

[Am. Jur. Pleading and Practice Forms, Federal Practice and Procedure § 1370](#) (Complaint—For declaratory judgment—Allegation—Existence of actual controversy)

[Federal Procedural Forms § 21:54](#) (Motion and notice—To dismiss action for declaratory relief—Failure to present justiciable controversy)

[Federal Procedural Forms § 21:62](#) (Order dismissing action for declaratory relief—Failure to state justiciable controversy)

The Federal Declaratory Judgment Act specifically limits its grant of judicial power to issue a declaratory judgment to cases of an "actual controversy."^[1] The Act provides no relief unless there is a justiciable controversy between the parties.^[2] Thus, in all cases arising under the Act, the threshold question is whether a justiciable controversy exists.^[3]

Whether a justiciable controversy exists in an action for declaratory relief brought in federal court is determined on a case-by-case basis.^[4] A mere demand for declaratory relief does not by itself establish a case or controversy necessary to confer subject matter jurisdiction.^[5] To satisfy the "actual controversy" requirement of the Declaratory Judgment Act, the dispute must be definite and concrete, touching the legal relations of parties having adverse legal interests; and the dispute must be real and substantial and admit of specific relief through a decree of a conclusive character as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.^[6] The requirement of an actual controversy encompasses concepts such as ripeness, standing, and prohibition against advisory judicial rulings.^[7] The controversy must be actual, not hypothetical

or of uncertain prospective occurrence.[8]

The Declaratory Judgment Act is procedural only and merely provides a procedure empowering a federal court to declare the legal rights and obligations of adversaries engaged in a justiciable controversy.[9] The statutory requirement of an "actual controversy" is merely a recognition that the federal judicial power is restricted under the Constitution[10] to cases and controversies.[11] Thus, a declaratory judgment plaintiff bears the burden of showing the existence of a controversy over which there is Article III jurisdiction.[12]

CUMULATIVE SUPPLEMENT

Cases:

In order to obtain relief under Declaratory Judgment Act, a plaintiff must allege facts from which it appears there is a substantial likelihood that he will suffer injury in the future. 28 U.S.C.A. § 2201. *Incredible Investments, LLC v. Fernandez-Rundle*, 984 F. Supp. 2d 1318 (S.D. Fla. 2013).

[END OF SUPPLEMENT]

[FN1] 28 U.S.C.A. § 2201(a).

[FN2] *Ortiz v. Citimortgage, Inc.*, 2013 WL 3157907 (S.D. Tex. 2013).

[FN3] *Atlanta Gas Light Co. v. Aetna Cas. and Sur. Co.*, 68 F.3d 409 (11th Cir. 1995).

[FN4] *U.S. Fire Ins. Co. v. Caulkins Indiantown Citrus Co.*, 931 F.2d 744 (11th Cir. 1991); *Dow Jones & Co., Inc. v. Harrods, Ltd.*, 237 F. Supp. 2d 394 (S.D. N.Y. 2002), judgment aff'd, 346 F.3d 357 (2d Cir. 2003).

[FN5] *S. Jackson & Son, Inc. v. Coffee, Sugar & Cocoa Exchange Inc.*, 24 F.3d 427 (2d Cir. 1994).

[FN6] *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 S. Ct. 764, 166 L. Ed. 2d 604 (2007).

[FN7] *BP Chemicals Ltd. v. Union Carbide Corp.*, 4 F.3d 975 (Fed. Cir. 1993).

[FN8] *BP Chemicals Ltd. v. Union Carbide Corp.*, 4 F.3d 975 (Fed. Cir. 1993).

Hypothetical questions, generally, see § 34.

[FN9] *Kunkel v. Continental Cas. Co.*, 866 F.2d 1269 (10th Cir. 1989); *Richardson v. Wells Fargo Bank, N.A.*, 873 F. Supp. 2d 800 (N.D. Tex. 2012), aff'd, 2013 WL 4017507 (5th Cir. 2013).

[FN10] U.S. Const. Art. III, § 2.

[FN11] *Companion Assurance Co. v. Alliance Assurance Co., Ltd.*, 21 V.I. 34, 585 F. Supp. 1382 (D.V.I. 1984).

As to the Federal Declaratory Judgment Act limits to "cases of actual controversy," see § 10.

[FN12] [Organic Seed Growers and Trade Ass'n v. Monsanto Co.](#), 718 F.3d 1350 (Fed. Cir. 2013).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 29

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

II. Availability of Declaratory Relief
B. Justiciability
2. Actual Controversy

[Topic Summary Correlation Table References](#)

§ 30. Interest of parties

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑64

Any person interested as or through an executor, administrator, trustee, guardian, or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust, in the administration of a trust, or of the estate of a decedent, an infant, lunatic, or insolvent, may have a declaration of rights or legal relations:[1]

- (1) to ascertain any class of creditors, devisees, legatees, heirs, next of kin, or others;
- (2) to direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity; or
- (3) to determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration prejudices the rights of persons not parties to the proceeding.[2] In any proceeding which involves the validity of a municipal ordinance or franchise, the municipality is a party and is entitled to be heard, and if the statute, ordinance, or franchise is alleged to be unconstitutional, the Attorney-General of the State must also be served with a copy of the proceeding and be entitled to be heard.[3]

A party seeking declaratory relief must have a legally protected interest in the controversy or, in other words, a personal stake in the outcome.[4] The interest of the parties arising out of their relationship to each other and to the subject matter of the controversy must be more than merely general.[5] It must be a substantial[6] and legally protected[7] present interest in the relief sought.[8] An emotional involvement in a lawsuit, as for instance where it was claimed that a father would obtain emotional satisfaction from a ruling that his son's death was wrongful, is not sufficient.[9]

[FN1] Unif. Declaratory Judgments Act § 4.

[FN2] Unif. Declaratory Judgments Act § 11.

[FN3] Unif. Declaratory Judgments Act § 11.

[FN4] McKenna v. Williams, 874 A.2d 217 (R.I. 2005); Town of Eagle v. Christensen, 191 Wis. 2d 301, 529 N.W.2d 245 (Ct. App. 1995).

[FN5] Morris v. Fleming, 128 Ariz. 271, 625 P.2d 334 (Ct. App. Div. 1 1980).

[FN6] Harris v. Cassia County, 106 Idaho 513, 681 P.2d 988 (1984).

[FN7] Byrd v. Fard, 539 S.W.2d 213 (Tex. Civ. App. Dallas 1976).

[FN8] Town of Wickenburg v. State, 115 Ariz. 465, 565 P.2d 1326 (Ct. App. Div. 1 1977); Byrd v. Fard, 539 S.W.2d 213 (Tex. Civ. App. Dallas 1976).

[FN9] Ashcroft v. Mattis, 431 U.S. 171, 97 S. Ct. 1739, 52 L. Ed. 2d 219 (1977).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 30

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

II. Availability of Declaratory Relief
B. Justiciability
2. Actual Controversy

[Topic Summary Correlation Table References](#)

§ 31. Ripeness; future or contingent events

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 61, 68

Definition:

A controversy is "ripe" when it has reached, but has not passed, the point that the facts have sufficiently congealed to permit an intelligent and useful decision to be made.[1] A "ripe controversy" for declaratory judgment exists if the conflict is developed enough for the court to accurately determine the facts, resolve the conflict, and grant specific and conclusive relief.[2]

The ripeness doctrine applies to declaratory judgment actions.[3] More specifically, a declaratory action must be ripe in order to be justiciable[4] and is ripe only where an actual controversy exists,[5] that is, where a substantial controversy of sufficient immediacy and reality exists between parties having adverse legal interests.[6] An issue is not fit for review, and thus not ripe, if it rests upon contingent future events that may not occur as anticipated or may not occur at all.[7] The courts will not render a declaratory judgment as to future rights,[8] nor will they attempt to decide or declare the rights or status of parties upon a state of facts which is contingent or uncertain,[9] unless the settlement of present rights entails the settlement of such future or contingent rights[10] or unless a present determination of future or contingent rights serves a practical need of the parties for guidance in their future conduct.[11] Principles which are important in determining whether a declaratory judgment case is ripe are adversity of the interests of the parties, the conclusiveness of the judicial judgment, and the practical help or utility of that judgment.[12]

Ripeness, like standing, is a threshold issue[13] which implicates subject matter jurisdiction and which emphasizes the need for a concrete injury for a justiciable claim to be presented.[14] Although the case or controversy must exist at the time the declaratory judgment action is filed,[15] the appearance of "ripening seeds of a controversy" may be sufficient.[16] While pure legal questions which require little factual development are more likely to be ripe,[17] a party bringing a preenforcement challenge under a declaratory judgment act must nonetheless present a concrete factual situation.[18] If a claim, though predominantly legal in character, depends upon future events that may never come to pass, or that may not occur in the form forecasted, then the claim is unripe for judicial review.[19] To warrant issuance of a declaratory judgment based on the threat of future harm,

the ripeness doctrine requires that the threat remain real and immediate throughout the course of litigation.[20]

[FN1] BKHN, Inc. v. Department of Health Services, 3 Cal. App. 4th 301, 4 Cal. Rptr. 2d 188 (6th Dist. 1992).

[FN2] Dodson v. City of Wentzville, 133 S.W.3d 528 (Mo. Ct. App. E.D. 2004).

[FN3] Public Water Supply Dist. No. 8 of Clay County, Mo. v. City of Kearney, Mo., 401 F.3d 930 (8th Cir. 2005).

[FN4] Shields v. Norton, 289 F.3d 832 (5th Cir. 2002); Wylie v. State, Idaho Transp. Bd., 151 Idaho 26, 253 P.3d 700 (2011); Carnahan v. Lewis, 2012 WY 45, 273 P.3d 1065 (Wyo. 2012).

[FN5] Shields v. Norton, 289 F.3d 832 (5th Cir. 2002); Peoples Federal Savings and Loan Ass'n of South Carolina v. Resources Planning Corp., 358 S.C. 460, 596 S.E.2d 51 (2004).

[FN6] Shields v. Norton, 289 F.3d 832 (5th Cir. 2002).

[FN7] State of R.I. v. Narragansett Indian Tribe, 19 F.3d 685 (1st Cir. 1994); Ross Development Corp. v. Fireman's Fund Ins. Co., 809 F. Supp. 2d 449 (D.S.C. 2011).

[FN8] Lake Havasu Resort, Inc. v. Commercial Loan Ins. Corp., 139 Ariz. 369, 678 P.2d 950 (Ct. App. Div. 1 1983); Billings v. Wyoming Bd. of Outfitters and Professional Guides, 2004 WY 42, 88 P.3d 455 (Wyo. 2004).

[FN9] St. Paul Fire & Marine Ins. Co. v. Luke Ready Air, LLC, 880 F. Supp. 2d 1299 (S.D. Fla. 2012); McCutchen v. City of Fort Smith, 2012 Ark. 452, 2012 WL 6055930 (2012); Burlington Tp. v. Middle Dept. Inspection Agency, Inc., 175 N.J. Super. 624, 421 A.2d 616 (Law Div. 1980); Arnott v. Arnott, 132 Ohio St. 3d 401, 2012-Ohio-3208, 972 N.E.2d 586 (2012); Olson v. Town of Cottage Grove, 2008 WI 51, 309 Wis. 2d 365, 749 N.W.2d 211 (2008).

[FN10] Stabler v. Ramsay, 32 Del. Ch. 547, 88 A.2d 546 (1952), opinion adhered to on reh'g, 33 Del. Ch. 1, 89 A.2d 544 (1952).

[FN11] Moore v. Moore, 344 Pa. 324, 25 A.2d 130, 139 A.L.R. 1225 (1942).

[FN12] Step-Saver Data Systems, Inc. v. Wyse Technology, 912 F.2d 643, 12 U.C.C. Rep. Serv. 2d 343 (3d Cir. 1990); Professional Dog Breeders Advisory Council, Inc. v. Wolff, 752 F. Supp. 2d 575 (E.D. Pa. 2010).

[FN13] Patterson v. Planned Parenthood of Houston and Southeast Texas, Inc., 971 S.W.2d 439 (Tex. 1998); Olson v. Town of Cottage Grove, 2008 WI 51, 309 Wis. 2d 365, 749 N.W.2d 211 (2008).

[FN14] Patterson v. Planned Parenthood of Houston and Southeast Texas, Inc., 971 S.W.2d 439 (Tex. 1998).

[FN15] GTE Directories Pub. Corp. v. Trimen America, Inc., 67 F.3d 1563 (11th Cir. 1995).

[FN16] *City of Evansville v. Grissom*, 169 Ind. App. 467, 349 N.E.2d 207 (1976).

[FN17] *Dennehy v. Frambes*, 385 F. Supp. 2d 121 (D.P.R. 2005); *State v. American Civil Liberties Union of Alaska*, 204 P.3d 364 (Alaska 2009).

[FN18] *State v. American Civil Liberties Union of Alaska*, 204 P.3d 364 (Alaska 2009).

[FN19] *Ernst & Young v. Depositors Economic Protection Corp.*, 45 F.3d 530 (1st Cir. 1995).

[FN20] *Travelers Ins. Co. v. Obusek*, 72 F.3d 1148 (3d Cir. 1995).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 31

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

II. Availability of Declaratory Relief
B. Justiciability
2. Actual Controversy

[Topic Summary Correlation Table References](#)

§ 32. Potential for litigation

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑63

Under the Uniform Declaratory Judgments Act, courts of record within their respective jurisdictions have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.[1] Discretionary power under the Declaratory Judgment Act to determine the rights of parties before an injury has actually happened cannot be exercised unless there is a legitimate dispute between the parties.[2] On the other hand, a plaintiff does not have to wait to be sued and may go to court and seek a declaration of its rights if the plaintiff believes its rights to be affected and litigation is imminent.[3] It has been held in this regard that to constitute an actual controversy, there need not exist an actual right of action in one party against the other in which consequential relief might be granted[4] and that the court's jurisdiction depends on whether the plaintiff has a "reasonable apprehension" of being sued.[5] However, it has also been said that a mere fear or apprehension that a claim may be asserted in the future is not ground for issuing a declaratory judgment[6] and that a justiciable controversy exists when litigation to resolve the controversy appears to be unavoidable.[7]

[FN1] Unif. Declaratory Judgments Act § 1.

[FN2] *Step-Saver Data Systems, Inc. v. Wyse Technology*, 912 F.2d 643, 12 U.C.C. Rep. Serv. 2d 343 (3d Cir. 1990).

[FN3] *Andrews v. Alamance County*, 132 N.C. App. 811, 513 S.E.2d 349 (1999).

[FN4] *Minneapolis Federation of Men Teachers, Local 238, A.F.L. v. Board of Ed. of City of Minneapolis*, 238 Minn. 154, 56 N.W.2d 203 (1952); *Garwood Irr. Co. v. Lundquist*, 252 S.W.2d 759 (Tex. Civ. App. Galveston 1952), writ refused.

[FN5] *Paramount Pictures Corp. v. Replay TV*, 298 F. Supp. 2d 921 (C.D. Cal. 2004); *O'Hagins, Inc. v. M5 Steel Mfg., Inc.*, 276 F. Supp. 2d 1020 (N.D. Cal. 2003); *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D.

597 (D. Nev. 2011) (real and reasonable apprehension of litigation).

[FN6] *Burlington Tp. v. Middle Dept. Inspection Agency, Inc.*, 175 N.J. Super. 624, 421 A.2d 616 (Law Div. 1980).

As to declaratory judgments dealing with future or contingent rights, see § 31.

[FN7] *Town of Spencer v. Town of East Spencer*, 349 N.C. 241, 351 N.C. 124, 522 S.E.2d 297 (1999).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 32

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

II. Availability of Declaratory Relief
B. Justiciability
2. Actual Controversy

[Topic Summary Correlation Table References](#)

§ 33. Advisory opinions

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 66

An actual controversy, as would support a finding of justiciability in a declaratory judgment action, is a prerequisite to a court having authority;[1] if there is no actual controversy between the parties regarding the adjudication of rights, as when only nonantagonistic demands are presented,[2] the declaratory judgment is an advisory opinion which the court does not have jurisdiction to render,[3] and therefore will not render,[4] however convenient it might be to have these questions decided for the government of future cases.[5] The fact that one wants legal advice is not a sufficient basis for seeking a declaratory judgment,[6] and a declaratory judgment action may not be used as a vehicle for obtaining such advice from a court.[7]

[FN1] §§ 28, 29.

[FN2] *Dean v. State ex rel. Doak*, 2012 OK CIV APP 105, 292 P.3d 58 (Div. 2 2012), cert. denied, (Nov. 5, 2012).

[FN3] *Hunters, Anglers and Trappers Ass'n of Vermont, Inc. v. Winooski Valley Park Dist.*, 181 Vt. 12, 2006 VT 82, 913 A.2d 391 (2006); *Martin v. Garner*, 286 Va. 76, 745 S.E.2d 419 (2013).

[FN4] *Phillips' Bar & Restaurant, Inc. v. City of New Orleans*, 116 So. 3d 92 (La. Ct. App. 4th Cir. 2013).

[FN5] *Etowah Baptist Ass'n v. Entrekin*, 45 So. 3d 1266 (Ala. 2010).

[FN6] *Clyde Sav. & Loan Ass'n v. May Dept. Stores*, 100 Ill. App. 3d 189, 55 Ill. Dec. 630, 426 N.E.2d 955 (1st Dist. 1981).

[FN7] *University of South Alabama Medical Center v. Mobile Infirmary Ass'n*, 89 So. 3d 735 (Ala. 2011); *Green Thumb Lawn Care, Inc. v. Iwanowicz*, 107 A.D.3d 1402, 967 N.Y.S.2d 542 (4th Dep't

2013).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 33

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

II. Availability of Declaratory Relief
B. Justiciability
2. Actual Controversy

[Topic Summary Correlation Table References](#)

§ 34. Conjectural, speculative, or hypothetical questions

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑65

Pursuant to the "actual controversy" requirement, in order to be the basis of a declaratory judgment action, the continuing controversy may not be conjectural,[1] speculative,[2] or hypothetical.[3] A mere abstract question or hypothetical threat to the plaintiff is not a sufficient basis for entertaining a declaratory judgment action.[4] It must be real and immediate and create a definite, rather than speculative, threat of future injury.[5]

The difference between an abstract question and a controversy is necessarily one of degree, and it would be difficult to fashion a precise test for determining in every case whether there is such a controversy.[6] Basically, the question in each case is whether the facts alleged, under all the circumstances, show that there is a substantial controversy between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.[7]

[FN1] *St. Paul Fire & Marine Ins. Co. v. Luke Ready Air, LLC*, 880 F. Supp. 2d 1299 (S.D. Fla. 2012); *Sterling v. Ourisman Chevrolet of Bowie Inc.*, 2013 WL 1870781 (D. Md. 2013); *Maradiaga v. Intermodal Bridge Transport, Inc.*, 899 F. Supp. 2d 551 (N.D. Tex. 2012).

[FN2] *Eccles v. Peoples Bank of Lakewood Village, Cal.*, 333 U.S. 426, 68 S. Ct. 641, 92 L. Ed. 784 (1948); *Donaldson v. State*, 2012 MT 288, 367 Mont. 228, 292 P.3d 364 (2012); *Charlottesville Area Fitness Club Operators Ass'n v. Albemarle County Bd. of Sup'rs*, 285 Va. 87, 737 S.E.2d 1 (2013).

[FN3] *St. Paul Fire & Marine Ins. Co. v. Luke Ready Air, LLC*, 880 F. Supp. 2d 1299 (S.D. Fla. 2012); *Sterling v. Ourisman Chevrolet of Bowie Inc.*, 2013 WL 1870781 (D. Md. 2013); *ITT Industries, Inc. v. Pacific Employers Ins. Co.*, 427 F. Supp. 2d 552 (E.D. Pa. 2006); *Maradiaga v. Intermodal Bridge Transport, Inc.*, 899 F. Supp. 2d 551 (N.D. Tex. 2012).

[FN4] *Long Island Lighting Co. v. Suffolk County, N.Y.*, 604 F. Supp. 759 (E.D. N.Y. 1985).

[FN5] *Malowney v. Federal Collection Deposit Group*, 193 F.3d 1342 (11th Cir. 1999).

[FN6] *Bellefonte Reinsurance Co. v. Aetna Cas. and Sur. Co.*, 590 F. Supp. 187 (S.D. N.Y. 1984).

[FN7] *Bellefonte Reinsurance Co. v. Aetna Cas. and Sur. Co.*, 590 F. Supp. 187 (S.D. N.Y. 1984).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 34

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

II. Availability of Declaratory Relief
B. Justiciability
2. Actual Controversy

[Topic Summary Correlation Table References](#)

§ 35. Mootness

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑65

The principle that when a case no longer presents an actual, ongoing case or controversy, the case is moot and a court no longer has jurisdiction to hear it applies to actions for declaratory judgment with the same force as it does to actions seeking traditional coercive relief.[1] Thus, courts should decide cases under a declaratory judgment statute only when, among other things, the case is not moot.[2] Mootness is particularly important in a case seeking a declaratory judgment because such cases present an elevated risk that the party is seeking an advisory opinion, which the courts seek to avoid.[3]

An action for declaratory judgment is moot where the judgment, if granted, would have no effect either directly or collaterally on the plaintiff, the plaintiff would be unable to obtain further relief based on the judgment, and no other relief is sought in the action.[4] An action for a declaratory judgment may be rendered moot by subsequent events,[5] even though there was a case or controversy at the time the action was commenced,[6] since there must be a substantial controversy between parties having real, adverse interests at the time the court is prepared to render judgment.[7] Thus, whether an issue is moot, so as to preclude declaratory relief, is to be determined at the time of the court's trial or hearing and not at the time of commencing the action.[8] However, an action is not rendered moot by the absence of an actual controversy as to one of a number of issues[9] or by the issuance of an administrative ruling covering some, but not all, of the questions directly or implicitly raised by the original complaint.[10]

The court may render declaratory relief on an otherwise moot issue (1) when there is the possibility of collateral legal consequences imposed on the person raising the issue; (2) when the challenged conduct is likely to evade judicial review and thus is capable of repetition; and (3) when an otherwise moot issue raises concerns of substantial public interest.[11] When conduct sought to be redressed by either declaratory or injunctive relief is peculiar to a particular event that has already occurred, the finality of the event in a manner incapable of repetition moots the controversy.[12] The voluntary cessation of the act is not sufficient to moot the litigation[13] unless it appears that there is no reasonable expectation that the wrong will be repeated, and the burden of persuasion in this regard is on the defendants and is a heavy one.[14] Thus, a declaratory judgment may be sought des-

pite allegations of mootness if the defendant's unlawful actions are capable of repetition yet evading review.[15]

Caution:

The exception for controversies which are capable of repetition, yet evading review, applies only when the parties plaintiff can show that they will again be subject to the same injury; that other persons may litigate a similar claim does not save a case from mootness.[16]

CUMULATIVE SUPPLEMENT

Cases:

A declaratory judgment is generally moot where the question presented for decision seeks a judgment upon a matter which, even if the sought judgment were granted, could not have any practical effect upon the parties. [Amaya v. City of San Antonio, 980 F. Supp. 2d 771 \(W.D. Tex. 2013\)](#).

[END OF SUPPLEMENT]

[FN1] [Hickman v. State of Mo., 144 F.3d 1141 \(8th Cir. 1998\)](#).

[FN2] [State v. American Civil Liberties Union of Alaska, 204 P.3d 364 \(Alaska 2009\)](#).

[FN3] [Sitkans for Responsible Government v. City & Borough of Sitka, 274 P.3d 486 \(Alaska 2012\)](#).

[FN4] [Wylie v. State, Idaho Transp. Bd., 151 Idaho 26, 253 P.3d 700 \(2011\)](#).

[FN5] [Underwood v. Alabama State Bd. of Educ., 39 So. 3d 120 \(Ala. 2009\)](#).

[FN6] [Korvettes, Inc. v. Brous, 617 F.2d 1021 \(3d Cir. 1980\)](#).

[FN7] [Preiser v. Newkirk, 422 U.S. 395, 95 S. Ct. 2330, 45 L. Ed. 2d 272 \(1975\)](#).

[FN8] [Wylie v. State, Idaho Transp. Bd., 151 Idaho 26, 253 P.3d 700 \(2011\)](#).

[FN9] [Powell v. McCormack, 395 U.S. 486, 89 S. Ct. 1944, 23 L. Ed. 2d 491 \(1969\)](#).

[FN10] [American Finance System Inc. v. Harlow, 65 F.R.D. 94 \(D. Md. 1974\)](#).

[FN11] [Wylie v. State, Idaho Transp. Bd., 151 Idaho 26, 253 P.3d 700 \(2011\)](#).

[FN12] [State Bd. of Chiropractic Examiners v. Stjernholm, 935 P.2d 959 \(Colo. 1997\)](#).

[FN13] [Maldonado v. Municipality of Barceloneta, 682 F. Supp. 2d 109 \(D.P.R. 2010\)](#) (where defendant has voluntarily, but not necessarily permanently, ceased its allegedly unconstitutional conduct).

[FN14] [Rabinowitz v. Board of Jr. College Dist. No. 508, Cook County, State of Ill., 507 F.2d 1255 \(7th Cir. 1974\)](#); [Barber v. Cornerstone Community Outreach, Inc., 42 So. 3d 65 \(Ala. 2009\)](#).

[FN15] *Boston Teachers Union, Local 66, AFT, AFL-CIO v. Edgar*, 787 F.2d 12, 31 Ed. Law Rep. 393 (1st Cir. 1986).

[FN16] *Funbus Systems, Inc. v. State of Cal. Public Utilities Com'n.*, 801 F.2d 1120, 8 Fed. R. Serv. 3d 822 (9th Cir. 1986).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 35

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

II. Availability of Declaratory Relief
C. Effect of Other Proceedings

[Topic Summary Correlation Table](#)


Research References

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  [45](#) to [47](#)

A.L.R. Library

A.L.R. Index, Declaratory Judgments

West's A.L.R. Digest, Declaratory Judgments  [45](#) to [47](#)

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS II C REF

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

II. Availability of Declaratory Relief
C. Effect of Other Proceedings
1. When Relief is Sought Under State Statutes

[Topic Summary Correlation Table References](#)

§ 36. Pendency of other action

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑45

Forms

[Am. Jur. Pleading and Practice Forms, Abatement, Revival and Stay §§ 68 to 79](#) (Abatement and stay; another action pending)

[Am. Jur. Pleading and Practice Forms, Declaratory Judgments § 42](#) (Motion—To dismiss action—No basis for declaratory relief—Proceeding pending in state court involving same issues and parties)

[Am. Jur. Pleading and Practice Forms, Federal Practice and Procedure § 1379](#) (Order—Dismissing action for declaratory relief—Pending proceeding in state court)

In connection with actions for declaratory judgment, relief will generally not be entertained if there is pending, at the commencement of the declaratory action, another action or proceeding to which the same persons are parties and in which are involved, and may be adjudicated, the same issues involved in the declaratory action.[1] A declaratory judgment is not a proper mode of determining the sufficiency of legal defenses to a pending action.[2] However, if the plaintiff in the declaratory judgment is not or could not be made a party in the other action, or if the issues are not identical so that the controversy between the parties will not necessarily be determined in the other action, declaratory relief will not be denied.[3] Moreover, the rule against granting declaratory judgment in cases where an identical action is pending in another court does not apply to a severable cause of action which does not include declaratory relief even though some of the same issues must be decided in both actions.[4]

A disputed question of law or procedure raised in a pending suit is not such an actual controversy as can be entertained under the Declaratory Judgments Act.[5] Thus, a declaratory judgment action cannot be maintained for the purpose of determining the burden of proof in another action.[6]

Caution:

Some jurisdictions may allow declaratory relief even where another action is pending if exceptional circumstances are alleged and proved, especially if the denial of relief will work an injustice.^[7]

[FN1] *Polk County Recreational Ass'n v. Susquehanna Patriot Commercial Leasing Co., Inc.*, 273 Neb. 1026, 734 N.W.2d 750 (2007).

[FN2] *Baker v. Miller*, 33 Ohio App. 2d 248, 62 Ohio Op. 2d 356, 294 N.E.2d 901 (2d Dist. Montgomery County 1972).

A declaratory judgment as to insurance coverage requiring an adjudication of the same issue as that in a prior pending action is not appropriate since to permit such a declaratory judgment would sanction the use of declaratory relief as a vehicle to determine the sufficiency of defenses to the pending action. *English v. Alfa Mut. Ins. Co.*, 554 So. 2d 1021 (Ala. 1989).

[FN3] *Ostrander v. Linn*, 237 Iowa 694, 22 N.W.2d 223 (1946).

[FN4] *Byrnes v. University of Houston*, 507 S.W.2d 815 (Tex. Civ. App. Houston 14th Dist. 1974), writ refused n.r.e., (July 10, 1974).

[FN5] *Williams v. Flood*, 124 Kan. 728, 262 P. 563 (1928).

[FN6] *Jefferson County ex rel. Coleman v. Chilton*, 236 Ky. 614, 33 S.W.2d 601 (1930).

[FN7] *Eastern Fine Paper, Inc. v. Garriga Trading Co., Inc.*, 457 A.2d 1111 (Me. 1983).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 36

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

II. Availability of Declaratory Relief
C. Effect of Other Proceedings
1. When Relief is Sought Under State Statutes

[Topic Summary Correlation Table References](#)

§ 37. Matters previously adjudicated

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑47

Generally, judgments and decrees speak for themselves, and declaratory judgment proceedings are not available to collaterally attack the judgment of a court of competent jurisdiction to construe and clarify a judgment or to modify or declare rights thereunder.[1] It is not the purpose of the declaratory judgment statute to be a substitute for established procedures for review of decrees or appealable orders.[2] Similarly, a declaratory judgment proceeding may not be utilized to determine the validity of a judgment.[3]

CUMULATIVE SUPPLEMENT

Cases:

Declaratory judgment action challenging sale of church building was impermissible collateral attack on order authorizing the sale; proper procedure would have been to move to vacate that order pursuant to statute permitting "any interested person" to move for such relief. [McKinney's CPLR 5015\(a\)](#); [McKinney's Religious Corporations Law § 12](#); [McKinney's N-PCL § 511](#). [Citizens for St. Patrick's v. Saint Patrick's Church of West Troy](#), 117 A.D.3d 1213, 985 N.Y.S.2d 743 (3d Dep't 2014).

[END OF SUPPLEMENT]

[FN1] [Fertitta v. Brown](#), 252 Md. 594, 251 A.2d 212 (1969).

[FN2] [State ex rel. Edmisten v. Tucker](#), 312 N.C. 326, 323 S.E.2d 294 (1984).

[FN3] [Confederate Point Partnership, Ltd. v. Schatten](#), 278 So. 2d 661 (Fla. 1st DCA 1973).

A declaratory judgment action brought in federal district court in Connecticut, by the assignor of a legal malpractice claim, to obtain a declaration that the assignment was void was an impermissible collateral

attack on the judgment after a federal district court in New Mexico had entered a stipulated judgment in a diversity action which required assignment of the legal malpractice claim as part of settlement of the action, after the federal district court in New Mexico had denied on the merits the assignor's motion to vacate the judgment, and after the assignor had failed to appeal from that denial. [SE Technologies, Inc. v. Summit Elec. Supply, Inc.](#), 392 F. Supp. 2d 399, 63 Fed. R. Serv. 3d 255 (D. Conn. 2005).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 37

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

II. Availability of Declaratory Relief
C. Effect of Other Proceedings
2. When Relief is Sought Under the Federal Act

[Topic Summary Correlation Table References](#)

§ 38. Other federal proceedings

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  45, 46

Forms

[Federal Procedural Forms § 21:48](#) (Answer—Pending action involving same parties and issues)

[Federal Procedural Forms § 21:59](#) (Motion—To dismiss action for declaratory relief—Proceeding pending in state court involving same issues and parties)

A federal court generally should not entertain a declaratory judgment action over which it has jurisdiction if the same fact-dependent issues are likely to be decided in another pending proceeding.[1] When a declaratory action in federal court involves the same parties and same state law issues as a pending action in state court, the declaratory action is duplicative and should not be entertained.[2] However, the pendency of another federal action involving the same set of facts will not bar declaratory relief if the issues in the declaratory action will not necessarily be determined in the other suit.[3]

Even if the lower court has jurisdiction to entertain a declaratory judgment suit, based on diversity of citizenship, the court may still decline to entertain the suit by deferring to another federal court suit even though the declaratory judgment suit was filed first.[4] It is appropriate for the federal court to decline jurisdiction over a declaratory judgment suit which was filed in apparent anticipation of a suit in another forum.[5] The federal declaratory judgment is not a prize to the winner of a race to the courthouses.[6]

Where a declaratory plaintiff raises a chiefly affirmative defense, and it appears that granting the relief could effectively deny an allegedly injured party its otherwise legitimate choice of forum and time for the suit, no declaratory judgment should issue.[7]

[FN1] [Kunkel v. Continental Cas. Co., 866 F.2d 1269 \(10th Cir. 1989\).](#)

[FN2] *State Farm Fire & Cas. Co. v. Willison*, 833 F. Supp. 2d 1200 (D. Haw. 2011).

[FN3] *Provident Tradesmens Bank & Trust Co. v. Patterson*, 390 U.S. 102, 88 S. Ct. 733, 19 L. Ed. 2d 936, 11 Fed. R. Serv. 2d 400 (1968).

[FN4] *Koch Engineering Co., Inc. v. Monsanto Co.*, 621 F. Supp. 1204 (E.D. Mo. 1985).

[FN5] *Great Dane Trailers, Inc. v. Gelco Rail Services*, 39 Fed. R. Serv. 2d 1077 (S.D. Ga. 1984); *Yoder v. Heinold Commodities, Inc.*, 630 F. Supp. 756 (E.D. Va. 1986).

[FN6] *Yoder v. Heinold Commodities, Inc.*, 630 F. Supp. 756 (E.D. Va. 1986).

[FN7] *BASF Corp. v. Symington*, 50 F.3d 555 (8th Cir. 1995).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 38

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

II. Availability of Declaratory Relief
C. Effect of Other Proceedings
2. When Relief is Sought Under the Federal Act

[Topic Summary Correlation Table References](#)

§ 39. Other federal proceedings—Federal criminal prosecutions

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  45, 46

A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside, or correct the sentence^[1] in accordance with established statutory procedures.^[2]

The relief obtainable only by a motion in the sentencing court cannot be sought by filing a declaratory judgment action in another district.^[3] The district court has jurisdiction of a complaint which may be construed as a request for a declaratory judgment to challenge the constitutionality of court-martial procedures, brought after the plaintiff is no longer in custody.^[4] However, if the plaintiff is still in custody and is challenging the conditions of parole, habeas corpus is the remedy preferred over declaratory judgment.^[5] When a prisoner seeking injunctive or declaratory relief challenges his or her parole eligibility date, but is subsequently released on parole, his or her claims are moot unless he or she alleges continuing adverse consequences from the challenged parole records.^[6]

Observation:

A controversy over whether an inmate was entitled to federal habeas relief setting aside his sentence or conviction obtained in California courts was not appropriate for a declaratory judgment where the inmate sought no final or conclusive determination of his habeas claim and instead carved out of that claim the question of whether, when he sought habeas relief, California would be governed by expedited procedures under the Antiterrorism and Effective Death Penalty Act (AEDPA) in defending the action.^[7] Had the inmate brought a habeas action itself, he undoubtedly would have obtained a determination, but he sought to have that question determined in anticipation of seeking habeas relief so that he would be better able to know the time limits that would govern a habeas action.^[8]

[FN1] 28 U.S.C.A. § 2255(a).

[FN2] Am. Jur. 2d, Habeas Corpus and Postconviction Remedies §§ 132 to 141.

[FN3] Hurley v. Lindsay, 207 F.2d 410 (4th Cir. 1953); Mowers v. U.S. Atty. Gen., 297 F. Supp. 535 (S.D. N.Y. 1969).

[FN4] Gallagher v. Quinn, 363 F.2d 301 (D.C. Cir. 1966).

[FN5] Sargis v. U.S. Bd. of Parole, 391 F. Supp. 362 (E.D. Mo. 1975).

The fact that a prisoner filed a petition for federal habeas corpus after filing a declaratory judgment suit in state court, challenging his competence to be executed in both proceedings, did not render the declaratory judgment proceeding improper. Singleton v. Endell, 316 Ark. 133, 870 S.W.2d 742 (1994).

[FN6] Anyanwutaku v. Moore, 151 F.3d 1053 (D.C. Cir. 1998).

[FN7] Calderon v. Ashmus, 523 U.S. 740, 118 S. Ct. 1694, 140 L. Ed. 2d 970 (1998).

[FN8] Calderon v. Ashmus, 523 U.S. 740, 118 S. Ct. 1694, 140 L. Ed. 2d 970 (1998).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 39

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

II. Availability of Declaratory Relief
C. Effect of Other Proceedings
2. When Relief is Sought Under the Federal Act

[Topic Summary Correlation Table References](#)

§ 40. Other foreign court proceedings

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  45, 47

A.L.R. Library

[Propriety and Extent of Application of Brillhart/Wilton Abstention Doctrine to "Mixed Claims" Involving Both Declaratory and Coercive Relief, 66 A.L.R. Fed. 2d 467](#)

In determining whether to dismiss a declaratory judgment suit brought under diversity jurisdiction in favor of a suit pending in the courts of a foreign country, the court will apply the same standard for deference as between two federal courts.[1] The court will defer to a first-filed foreign court action in which the proceedings have progressed significantly and which appears to offer comprehensive relief to the foreign party who has also filed the federal court action.[2]

A federal district court can issue an order granting assistance even though the case is not currently pending in a foreign tribunal.[3]

[FN1] [Brinco Mining Ltd. v. Federal Ins. Co., 552 F. Supp. 1233 \(D.D.C. 1982\).](#)

[FN2] [Brinco Mining Ltd. v. Federal Ins. Co., 552 F. Supp. 1233 \(D.D.C. 1982\).](#)

[FN3] [In re Letters Rogatory from Tokyo Dist. Prosecutor's Office, Tokyo, Japan, 16 F.3d 1016, 28 Fed. R. Serv. 3d 200 \(9th Cir. 1994\).](#)

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

II. Availability of Declaratory Relief
C. Effect of Other Proceedings
2. When Relief is Sought Under the Federal Act

[Topic Summary Correlation Table References](#)

§ 41. Other state court proceedings

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 45, 47

A.L.R. Library

[Propriety and Extent of Application of Brillhart/Wilton Abstention Doctrine to "Mixed Claims" Involving Both Declaratory and Coercive Relief, 66 A.L.R. Fed. 2d 467](#)

Forms

[Am. Jur. Pleading and Practice Forms, Abatement, Revival and Stay §§ 68 to 79](#) (Abatement and stay; another action pending)

Federal courts are reluctant to interfere unnecessarily with state court litigation.[1] Ordinarily, it is uneconomical as well as vexatious for a federal court to proceed in a declaratory judgment suit where another suit is pending in state court presenting the same issues, not governed by federal law, between the same parties.[2] There is little need for federal courts to issue declaratory judgments in cases where a state court has already accepted jurisdiction over the subject matter of the lawsuit when the only question is one of state law and when there is no suggestion that the state court is not in a position to define its own law in a fair manner.[3] Thus, where a contemporaneous state proceeding will resolve expeditiously all of the issues in controversy, the federal court should defer to the state court proceeding by declining to exercise jurisdiction under the declaratory judgment statute, especially in a case involving interpretation of state law.[4] It is also appropriate for federal courts to deny a declaratory judgment where the issues raised are likely to be fully adjudicated in an action pending in state court at the time the declaratory judgment suit is filed in federal court even if federal court jurisdiction is founded on a federal question.[5] The fact that the declaratory judgment suit was filed in federal court shortly before the parallel state court suit does not automatically entitle the plaintiff to a federal court hearing.[6] However, a federal court does have the discretion under the Declaratory Judgment Act to determine some issues while referring other issues to a state court hearing a pending matter.[7]

Observation:

When a state court has matters well in hand, withholding federal declaratory relief premised on constitutional grounds will maintain and facilitate federalism, foster the state-created accommodations of constitutional principles and state interests, and husband federal judicial resources.[8] Whether or not abstention is required, these core values are highly relevant in deciding if discretionary relief should be granted.[9]

[FN1] *Samuels v. Mackell*, 401 U.S. 66, 91 S. Ct. 764, 27 L. Ed. 2d 688 (1971).

[FN2] *Brillhart v. Excess Ins. Co. of America*, 316 U.S. 491, 62 S. Ct. 1173, 86 L. Ed. 1620 (1942).

[FN3] *American Home Assur. Co. v. Evans*, 791 F.2d 61 (6th Cir. 1986); *Carey v. East Detroit Jaycees, Inc.*, 660 F. Supp. 1577 (E.D. Mich. 1987).

[FN4] *Miller v. Miller*, 423 F.2d 145 (10th Cir. 1970); *Dresser, Inc. v. Lowry*, 320 F. Supp. 2d 486 (W.D. La. 2004); *Ohio Cas. Co. v. Jackson County Bank*, 562 F. Supp. 1165 (W.D. Wis. 1983).

A contractor's federal declaratory judgment action arising from an insurance coverage dispute would be stayed, to permit a similar, subsequently filed state court action by insurer to proceed, as the issues were the same in both suits, those issues presented undecided questions of state and not federal law, and the possible need for joinder of a subcontractor, the primary insured, in the federal action would destroy diversity. *Konover Const. Corp. v. Royal Indemnity Co.*, 399 F. Supp. 2d 130 (D. Conn. 2005).

[FN5] *Navajo Nation v. District Court for Utah County, Fourth Judicial Dist., State of Utah*, 624 F. Supp. 130 (D. Utah 1985), decision *aff'd*, 831 F.2d 929 (10th Cir. 1987).

[FN6] *Continental Ins. Companies v. Bayless & Roberts, Inc.*, 366 F. Supp. 287 (D. Alaska 1973), judgment *aff'd*, 503 F.2d 1379 (9th Cir. 1974); *Firemen's Ins. Co. of Newark, N. J. v. Riley*, 322 F. Supp. 349 (W.D. Ky. 1971).

[FN7] *Utah Intern. Inc. v. Intake Water Co.*, 484 F. Supp. 36 (D. Mont. 1979).

[FN8] *El Dia, Inc. v. Hernandez Colon*, 963 F.2d 488 (1st Cir. 1992).

[FN9] *El Dia, Inc. v. Hernandez Colon*, 963 F.2d 488 (1st Cir. 1992).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 41

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

II. Availability of Declaratory Relief
C. Effect of Other Proceedings
2. When Relief is Sought Under the Federal Act

[Topic Summary Correlation Table References](#)

§ 42. Other state court proceedings—Federal intervention in pending state criminal cases

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  45, 47

A federal court may not intervene by injunction or declaratory judgment in a pending state criminal prosecution in the absence of extraordinary circumstances, such as the conduct of the proceeding in bad faith or for purposes of harassment or where the state statute to be applied is flagrantly violative of constitutional provisions.[1] Thus, a criminal defendant cannot collaterally attack the constitutionality of statutes relevant to his or her criminal prosecution by a declaratory judgment.[2] This policy of equitable restraint is founded on the premise that ordinarily, a pending state prosecution provides the accused a fair and sufficient opportunity for vindication of federal constitutional rights.[3]

Under the exception to the general rule against federal court intervention, whereby there may be federal equitable intervention when there are extraordinary circumstances showing a threat of irreparable injury which is both great and immediate,[4] such as bad faith or harassment by state officials responsible for the prosecution, "bad faith" generally means that a prosecution has been brought without a reasonable expectation of obtaining a valid conviction.[5]

[FN1] *Wooley v. Maynard*, 430 U.S. 705, 97 S. Ct. 1428, 51 L. Ed. 2d 752 (1977); *Kugler v. Helfant*, 421 U.S. 117, 95 S. Ct. 1524, 44 L. Ed. 2d 15 (1975).

As to injunctions, in general, see *Am. Jur. 2d, Injunctions* §§ 1 et seq.

[FN2] *Hall v. State*, 264 Neb. 151, 646 N.W.2d 572 (2002).

[FN3] *Kugler v. Helfant*, 421 U.S. 117, 95 S. Ct. 1524, 44 L. Ed. 2d 15 (1975).

[FN4] *Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973) (holding modified on other grounds by, *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992)); *Samuels v. Mackell*, 401 U.S. 66, 91 S. Ct. 764, 27 L. Ed. 2d 688 (1971).

[FN5] [Kugler v. Helfant](#), 421 U.S. 117, 95 S. Ct. 1524, 44 L. Ed. 2d 15 (1975).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 42

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

II. Availability of Declaratory Relief
C. Effect of Other Proceedings
2. When Relief is Sought Under the Federal Act

[Topic Summary Correlation Table References](#)

§ 43. Other state court proceedings—Anti-Injunction Act

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 45, 47

A court of the United States may not grant an injunction to stay proceedings in a state court except as expressly authorized by an Act of Congress or where necessary in aid of its jurisdiction or to protect or effectuate its judgments.[1] However, because the Anti-Injunction Act is not expressly applicable to declaratory judgments,[2] it should more properly be said that such a result is justified through an extension by analogy to declaratory judgments in situations where the underlying policy against unseemly interference with proper state litigation is applicable.[3] Thus, the unavailability of injunctive relief under the Anti-Injunction Act should not inevitably lead to a denial of declaratory relief.[4] If a state suit is likely to turn on a question of federal law with which the federal court is more familiar and experienced and if the state court does not proceed in the normal course to adjudicate the matter or otherwise indicates a willingness to hold its hand pending a federal decision on that question, it is neither necessary nor desirable to construe the Anti-Injunction Act as precluding a declaratory judgment on the common federal question.[5]

Observation:

The court would not issue a declaration requested by a corporation that the state regulation of multiple employer welfare arrangements (MEWA) was preempted, where the basic controversy over the corporation's violation of MEWA was remanded to the state corporation commission and the state proceeding had begun before an action in federal court, since the declaratory judgment would be equivalent to an injunction interfering with the state proceedings, which is prohibited by the Anti-Injunction Act.[6]

[FN1] 28 U.S.C.A. § 2283.

[FN2] [Puerto Rico Intern. Airlines, Inc. v. Silva Recio](#), 520 F.2d 1342 (1st Cir. 1975); [McLucas v. Palmer](#), 427 F.2d 239 (2d Cir. 1970); [Hall v. Crosland](#), 311 F. Supp. 106 (M.D. Ala. 1970).

[FN3] Thiokol Chemical Corp. v. Burlington Industries, Inc., 448 F.2d 1328 (3d Cir. 1971).

[FN4] Garrett v. Hoffman, 441 F. Supp. 1151 (E.D. Pa. 1977).

[FN5] Thiokol Chemical Corp. v. Burlington Industries, Inc., 448 F.2d 1328 (3d Cir. 1971).

[FN6] Employers Resource Management Co. v. Shannon, 869 F. Supp. 398 (E.D. Va. 1994), judgment aff'd, 65 F.3d 1126 (4th Cir. 1995).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 43

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

II. Availability of Declaratory Relief
C. Effect of Other Proceedings
2. When Relief is Sought Under the Federal Act

[Topic Summary Correlation Table References](#)

§ 44. Matters adjudicated in other actions

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑47

The federal courts generally recognize that the Declaratory Judgment Act was designed to provide a remedy in a case or controversy while there is still opportunity for peaceable judicial settlement and not to determine whether rights theretofore adjudicated have been properly adjudicated.[1] The Act does not provide a means whereby previous judgments in state criminal cases may be reexamined, and it is not a substitute for appeal or postconviction remedies in criminal cases.[2] Thus, a federal district court cannot review matters actually decided by the state court,[3] and a state prisoner who has already been convicted cannot use the federal declaratory judgment remedy as another means to appeal the criminal conviction.[4]

[FN1] *Clark v. Memolo*, 174 F.2d 978 (D.C. Cir. 1949).

[FN2] *Johnson v. Onion*, 761 F.2d 224 (5th Cir. 1985).

[FN3] *Kiowa Indian Tribe of Oklahoma v. Hoover*, 150 F.3d 1163 (10th Cir. 1998).

[FN4] *Johnson v. Onion*, 761 F.2d 224 (5th Cir. 1985).

As to federal criminal prosecutions, see § 39.

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 44

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

II. Availability of Declaratory Relief
D. Alternative Remedies

[Topic Summary Correlation Table](#)


Research References

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  [41](#) to [44](#)

A.L.R. Library

A.L.R. Index, Declaratory Judgments

West's A.L.R. Digest, Declaratory Judgments  [41](#) to [44](#)

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS II D REF

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

II. Availability of Declaratory Relief
D. Alternative Remedies

[Topic Summary Correlation Table References](#)

§ 45. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  41, 43

The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate.[1] The court may order a speedy hearing of an action for a declaratory judgment.[2] The Declaratory Judgment Act complements, but does not displace, relief available under applicable law.[3] Although a declaratory judgment was not designed to supplant existing remedies, it is an alternative or additional remedy to facilitate the administration of justice and to fix and determine rights.[4] Declaratory relief is not a substitute for removal.[5]

[FN1] Fed. R. Civ. P. 57.

[FN2] Fed. R. Civ. P. 57.

[FN3] *Commercial Union Ins. Co. v. Walbrook Ins. Co., Ltd.*, 41 F.3d 764 (1st Cir. 1994).

[FN4] *Kaske v. City of Rockford*, 96 Ill. 2d 298, 70 Ill. Dec. 841, 450 N.E.2d 314 (1983).

[FN5] *Exxon Shipping Co. v. Airport Depot Diner, Inc.*, 120 F.3d 166 (9th Cir. 1997).

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

II. Availability of Declaratory Relief
D. Alternative Remedies

[Topic Summary Correlation Table References](#)

§ 46. Effect of Uniform Declaratory Judgments Act

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  41, 43

Under the Uniform Declaratory Judgments Act, courts of record within their respective jurisdictions have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.[1] The Act is to be liberally construed and administered.[2] All orders, judgments, and decrees under the Act may be reviewed as other orders, judgments, and decrees.[3]

[FN1] Unif. Declaratory Judgments Act § 1.

[FN2] Unif. Declaratory Judgments Act § 12.

[FN3] Unif. Declaratory Judgments Act § 7.

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 46

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

II. Availability of Declaratory Relief
D. Alternative Remedies

[Topic Summary Correlation Table References](#)

§ 47. Denial of declaratory relief: existence of alternative remedy

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  42, 43

A failure to exhaust administrative remedies is not a jurisdictional bar to a declaratory judgment action,[1] and declaratory judgment jurisdiction should not be refused merely because another remedy is available.[2] A federal court should accept a case if the declaratory judgment route provides a straightforward way to resolve the underlying controversy and if the state court alternative may contain significant pitfalls;[3] however, if the court believes that more appropriate[4] or more effective relief can be obtained by another procedure, and that for that reason a declaration will serve no useful purpose, it is justified in refusing a declaratory judgment.[5] Under a more stringent statement of the same general rule, if a remedy exists, either in law or in equity, a petition for declaratory judgment may lie only where there is some fact or circumstance which necessitates a determination of disputes not merely for the purpose of enforcing accrued rights but also in order to guide and protect the petitioner from uncertainty and insecurity with respect to the propriety of some future act or conduct which is properly incident to his or her alleged rights and with future action without such direction might reasonably jeopardize his or her interest.[6]

Before a court may, in its discretion, deny declaratory relief on the ground of the existence of other remedies, it must clearly appear that the asserted cumulative remedies are not only available to the plaintiff but also that they are speedy and adequate or as well suited to the plaintiff's needs as declaratory relief.[7] The fact that a controversy is generally susceptible of relief through some other remedy does not bar declaratory judgment relief where the case is not ripe for relief by way of such other remedy.[8]

Caution:

The alternative remedy available, such as damages, injunctive relief, and the like, may be harsher than the declaratory relief sought, and if the plaintiff seeks declaratory relief, the court is not required to compel him or her to seek a more stringent remedy.[9]

[FN1] *Ameigh v. Baycliffs Corp.*, 81 Ohio St. 3d 247, 1998-Ohio-467, 690 N.E.2d 872 (1998).

As to pendency of another action, see § 36.

[FN2] *ARW Exploration Corp. v. Aguirre*, 947 F.2d 450 (10th Cir. 1991).

[FN3] *Metropolitan Property and Liability Ins. Co. v. Kirkwood*, 729 F.2d 61 (1st Cir. 1984).

The Uniform Administrative Procedure Act deprived a mental health committee of an adequate administrative remedy, and thus, the rule requiring exhaustion of administrative remedies did not apply to preclude the committee's superior court action for declaratory judgment. *Sastrom v. Psychiatric Sec. Review Bd.*, 105 Conn. App. 477, 938 A.2d 1233 (2008).

[FN4] *Smith v. Metropolitan Property and Liability Ins. Co.*, 629 F.2d 757 (2d Cir. 1980).

[FN5] *Chicago Metallic Mfg. Co. v. Edward Katzinger Co.*, 123 F.2d 518 (C.C.A. 7th Cir. 1941); *Wyoming Humane Soc. v. Port*, 404 P.2d 834 (Wyo. 1965).

An administrative remedy for a taxpayer challenging the constitutionality of a statute providing that taxpayers were not entitled to interest on refunds of certain capital gains taxes was adequate, and thus, before bringing an action for declaratory relief, the taxpayer was required to exhaust administrative remedies by requesting an abatement with the Commissioner of Revenue and appealing any denial to the Appellate Tax Board; even if the Board could not have declared the statute facially unconstitutional, the Board could have declared the statute unconstitutional or illegal as applied to the taxpayer and could have awarded him interest. *DeMoranville v. Commissioner of Revenue*, 457 Mass. 30, 927 N.E.2d 448 (2010).

[FN6] *Mayor and Council of Athens v. Gerdine*, 202 Ga. 197, 42 S.E.2d 567 (1947).

[FN7] *Lister v. Board of Regents of University Wisconsin System*, 72 Wis. 2d 282, 240 N.W.2d 610 (1976).

[FN8] *Trossman v. Trossman*, 24 Ill. App. 2d 521, 165 N.E.2d 368, 80 A.L.R.2d 933 (1st Dist. 1960).

[FN9] *Columbia Pictures Corp. v. De Toth*, 26 Cal. 2d 753, 161 P.2d 217, 162 A.L.R. 747 (1945).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 47

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

II. Availability of Declaratory Relief
D. Alternative Remedies

[Topic Summary Correlation Table References](#)

§ 48. Special statutory remedy

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  44

A declaratory judgment act is not a substitute or alternative for such actions as are particularly provided for, to be brought in a particular way.[1] Where a statute provides a special form of remedy for a specific type of case, that statutory remedy is to be followed,[2] and a party may not circumvent those special statutory proceedings by a declaratory judgment action.[3] Where the legislature creates an administrative remedy and there exists no other recognized, statutory, common-law, or equitable remedy, the Declaratory Judgment Act itself does not create an alternative remedy.[4] Thus, if a special statutory remedy exists for a specific type of case and the legislature intends that remedy to be exclusive or primary, a party may not bypass the special statutory remedy by bringing an action for a declaratory judgment or for equitable relief, whether the special statutory remedy begins with an adjudicatory administrative proceeding or with a special judicial proceeding.[5]

[FN1] *City of Pikeville v. Pike County*, 297 S.W.3d 47 (Ky. Ct. App. 2009).

[FN2] *Hawaii's Thousand Friends v. City and County of Honolulu*, 75 Haw. 237, 858 P.2d 726 (1993).

The general rule is that if review of a local zoning and planning decision is available under a statute allowing for judicial review of a zoning action, no declaratory judgment action is available. *Anderson House, LLC v. Mayor and City Council of Rockville*, 402 Md. 689, 939 A.2d 116 (2008).

[FN3] *Utilities, Inc. of Maryland v. Washington Suburban Sanitary Com'n*, 362 Md. 37, 763 A.2d 129 (2000); *Houston Independent School Dist. v. 1615 Corp.*, 217 S.W.3d 631 (Tex. App. Houston 14th Dist. 2006).

[FN4] *Zappone v. Liberty Life Ins. Co.*, 349 Md. 45, 706 A.2d 1060 (1998).

[FN5] *Furnitureland South, Inc. v. Comptroller of Treasury of State*, 364 Md. 126, 771 A.2d 1061 (2001).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 48

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

II. Availability of Declaratory Relief
D. Alternative Remedies

[Topic Summary Correlation Table References](#)

§ 49. Declaratory judgment in place of habeas corpus petition

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  43

An application for a writ of habeas corpus may be denied on the merits notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the state.[1] If the petitioner is currently in custody, the federal declaratory judgment remedy is not available as a substitute for a habeas corpus petition to be filed after exhaustion of state remedies.[2] If the record does not indicate that the plaintiff is currently in custody, the exhaustion of remedies requirement does not preclude the plaintiff from seeking declaratory relief against the enforcement of state criminal statutes although the federal court may still abstain in favor of the plaintiff's state remedy on appeal or on collateral attack of the state conviction.[3]

Pursuant to federal statute, every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws is liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress except that in any action brought against a judicial officer for an act or omission taken in the officer's judicial capacity, injunctive relief will not be granted unless a declaratory decree was violated or declaratory relief was unavailable.[4] Thus, a state prisoner may seek declaratory judgment relief in a federal civil rights action regarding the conditions of confinement so long as the declaratory relief is not addressed to the duration or legality of the confinement.[5]

Observation:

A prisoner's habeas corpus petition was properly treated as a claim for declaratory relief where it was based on the prisoner's contention that parole eligibility had been recomputed incorrectly because of the department of corrections' misinterpretation of the statute.[6]

[FN1] 28 U.S.C.A. § 2254(b)(2).

[FN2] *Christopher v. State of Iowa*, 324 F.2d 180 (8th Cir. 1963).

[FN3] *Kister v. Ohio Bd. of Regents*, 365 F. Supp. 27 (S.D. Ohio 1973), judgment aff'd, 414 U.S. 1117, 94 S. Ct. 855, 38 L. Ed. 2d 747 (1974).

[FN4] 42 U.S.C.A. § 1983.

[FN5] *Robinson v. Leahy*, 401 F. Supp. 1027 (N.D. Ill. 1975).

[FN6] *Collins v. Gunter*, 834 P.2d 1283 (Colo. 1992).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 49

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
A. In General

[Topic Summary Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  [81](#), [82](#), [84](#), [91](#), [113](#)

A.L.R. Library

A.L.R. Index, Declaratory Judgments

A.L.R. Index, Uniform Declaratory Judgments Act

West's A.L.R. Digest, Declaratory Judgments  [81](#), [82](#), [84](#), [91](#), [113](#)

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS III A REF

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
A. In General

[Topic Summary Correlation Table References](#)

§ 50. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 81, 82, 91

Generally, the scope of matters to which a declaratory judgment may be rendered is broad.[1] In its original conception, a declaratory judgment or decree was concerned only with questions of status, or property rights connected therewith, and the construction of wills and other legal instruments; however, as to subject matter, the field of operation has become extensive, its scope kept liberal and wide.[2] Nevertheless, the declaratory judgment does not fit every occasion and does not replace the existing system of remedies and actions.[3] For instance, the matter as to which a declaratory judgment is sought must constitute an actual or justiciable controversy.[4]

In theory, declaratory judgments are largely anticipatory;[5] in practice, the jurisdiction has been somewhat extended.[6] Since the declarations may be either affirmative or negative in form and effect,[7] the proceeding may be used to establish the absence, as well as the existence, of a right, duty, obligation, or liability.[8]

[FN1] *Sheldon v. Powell*, 99 Fla. 782, 128 So. 258 (1930); *Gary v. Marquette Cas. Co.*, 72 So. 2d 619 (La. Ct. App. 1st Cir. 1954); *New York Post Corporation v. Kelley*, 296 N.Y. 178, 71 N.E.2d 456, 170 A.L.R. 407 (1947).

[FN2] *Sheldon v. Powell*, 99 Fla. 782, 128 So. 258 (1930).

[FN3] *Gary v. Marquette Cas. Co.*, 72 So. 2d 619 (La. Ct. App. 1st Cir. 1954).

As to appellate review of declaratory judgments, see [Am. Jur. 2d, Appellate Review](#) §§ 17, 166.

[FN4] §§ 21 to 27.

[FN5] *Sattinger v. Newbauer*, 123 Cal. App. 2d 365, 266 P.2d 586 (2d Dist. 1954).

[FN6] *Miller v. Currie*, 208 Wis. 199, 242 N.W. 570 (1932).

[FN7] Unif. Declaratory Judgments Act § 1.

[FN8] *Columbia Pictures Corp. v. De Toth*, 26 Cal. 2d 753, 161 P.2d 217, 162 A.L.R. 747 (1945); *Travelers Ins. Co. v. Greenough*, 88 N.H. 391, 190 A. 129, 109 A.L.R. 1096 (1937).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 50

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
A. In General

[Topic Summary Correlation Table References](#)

§ 51. Scope of declaratory actions in federal courts

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 81, 82

Subject to specified exceptions, the courts of the United States are authorized to declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.[1] As with actions seeking a declaratory judgment generally,[2] a justiciable controversy is a requisite for bringing an action seeking declaratory relief pursuant to the federal statute.[3]

Specific statutory provisions may also prescribe the availability of a declaratory judgment in particular cases or involving particular issues. Thus, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, a private party may seek a declaratory judgment even in the absence of a governmental enforcement action,[4] and a defendant may obtain declaratory relief.[5] In other particular matters, the federal statutory scheme may not avail parties of a right to bring a declaratory judgment action in a federal court[6] or may impose prerequisites to the bringing of an action for declaratory relief, such as the exhaustion of administrative remedies.[7]

[FN1] 28 U.S.C.A. § 2201.

[FN2] §§ 50 to 52.

[FN3] § 29.

[FN4] *Carpenter Technology Corp. v. City of Bridgeport*, 180 F.3d 93 (2d Cir. 1999) (referring to 42 U.S.C.A. § 9607(a)(4)(B)).

As to private suits for recovery of costs of response, see *Am. Jur. 2d, Pollution Control* §§ 1327 to 1347.

[FN5] *U.S. v. Davis*, 261 F.3d 1, 57 Fed. R. Evid. Serv. 748 (1st Cir. 2001).

[FN6] *aaiPharma Inc. v. Thompson*, 296 F.3d 227 (4th Cir. 2002); *Fletcher v. U.S.*, 116 F.3d 1315 (10th Cir. 1997).

[FN7] *Winter v. California Medical Review, Inc.*, 900 F.2d 1322 (9th Cir. 1989).

As to declaratory judgments in reference to an administrative action, generally, see § 77.

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 51

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
A. In General

[Topic Summary Correlation Table References](#)

§ 52. Scope prescribed by Uniform Declaratory Judgments Act

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 81, 82, 91

The Uniform Declaratory Judgments Act broadly authorizes the declaration of rights, status, and other legal relations whether or not further relief is or could be claimed.[1] Any person interested under a deed, will, written contract, or other writing constituting a contract or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.[2] Particular provision for declaratory judgments is also provided for matters involving the construing of a contract either before or after there is a breach of the contract[3] and for estates, trusts, and wills.[4]

The enumeration of matters as to which a declaratory judgment may be rendered does not limit or restrict the exercise of the general powers conferred in any proceeding where declaratory relief is sought in which a judgment or decree will terminate the controversy or remove an uncertainty.[5]

Observation:

The Uniform Declaratory Judgments Act is remedial. Its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations. The Act's provisions are to be liberally construed and administered.[6]

[FN1] Unif. Declaratory Judgments Act § 1.

[FN2] Unif. Declaratory Judgments Act § 2.

[FN3] Unif. Declaratory Judgments Act § 3.

As to contracts being a matter as to which declaratory judgments may be rendered, see §§ 114 to 118.

[FN4] § 144.

[FN5] Unif. Declaratory Judgments Act § 5.

[FN6] Unif. Declaratory Judgments Act § 12.

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 52

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
A. In General

[Topic Summary Correlation Table References](#)

§ 53. Negligence cases

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 [81](#), [82](#), [113](#)

Declaratory relief is not ordinarily available in respect of allegations of past negligence and damage,^[1] nor will an action for declaratory relief generally be available to a prospective defendant in a negligence action seeking to obtain a declaration of nonliability as to the prospective plaintiff.^[2]

Observation:

To reverse the roles of the parties to a negligence action would jeopardize those procedures the law has traditionally provided to injured parties seeking judicial relief. An injured party has a right to choose the forum and time, if at all, to assert a claim. To permit a prospective defendant to attempt to obtain a declaration of nonliability would force an injured party to litigate a claim that party may not have wanted to litigate at a time which might be inconvenient or which might precede the party's determination of the full extent of damages.^[3]

There is authority, however, that in some circumstances, a factual determination of negligence may properly be subject to declaratory judgment,^[4] and challenges as to the constitutionality of statutory provisions affecting the outcome of a negligence case may be a matter as to which a declaratory judgment may properly be rendered.^[5]

[FN1] *Ennis v. Casey*, 72 Idaho 181, 238 P.2d 435, 28 A.L.R.2d 952 (1951).

[FN2] *Cunningham Bros., Inc. v. Bail*, 407 F.2d 1165 (7th Cir. 1969); *States S. S. Co. v. Featherstone*, 240 F. Supp. 830 (D. Or. 1965); *Sun Oil Co. v. Transcontinental Gas Pipe Line Corp.*, 108 F. Supp. 280 (E.D. Pa. 1952), judgment aff'd, 203 F.2d 957 (3d Cir. 1953).

[FN3] *Cunningham Bros., Inc. v. Bail*, 407 F.2d 1165 (7th Cir. 1969).

[FN4] *Spivey Co. v. Travelers Ins. Companies*, 407 F. Supp. 916 (E.D. Pa. 1976).

[FN5] *Best v. Taylor Mach. Works*, 179 Ill. 2d 367, 228 Ill. Dec. 636, 689 N.E.2d 1057 (1997).

As to declaratory judgment actions regarding statutes and ordinances, generally, see §§ 55 to 76.

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 53

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
A. In General

[Topic Summary Correlation Table References](#)

§ 54. Criminal prosecutions

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  81, 84

A.L.R. Library

[Validity, construction, and application of criminal statutes or ordinances as proper subject for declaratory judgment, 10 A.L.R.3d 727](#)

A declaratory judgment will generally not be granted where its only effect would be to decide matters which properly should be decided in a criminal action.[1] While a pending criminal prosecution against an individual for violating a county ordinance may preclude that individual from challenging the ordinance in a civil action, another affected party might not be precluded from seeking a declaratory judgment where there are no pending charges against that party.[2]

A declaratory judgment is not available to restrain a criminal prosecution where the facts are in dispute, or open to different interpretations,[3] or where there are insufficient facts presented to enable the court to balance the State's interest in enforcing its penal laws with an individual's asserted rights.[4] Similarly, a declaratory judgment may not be employed as a device to enforce criminal statutes through the direct action of private parties.[5]

[FN1] *Moye v. City of Raleigh*, 503 F.2d 631 (4th Cir. 1974); *Board of Com'rs of Orleans Levee Dist. v. Connick*, 654 So. 2d 1073 (La. 1995); *Cayuga Indian Nation of New York v. Gould*, 14 N.Y.3d 614, 904 N.Y.S.2d 312, 930 N.E.2d 233 (2010).

As to the use of declaratory judgment proceedings to determine the validity or construction of a criminal statute, see §§ 64, 65.

[FN2] *Sarrio v. Gwinnett County*, 273 Ga. 404, 542 S.E.2d 485 (2001).

[FN3] *New York Foreign Trade Zone Operators v. State Liquor Authority*, 285 N.Y. 272, 34 N.E.2d

316 (1941); *Bunis v. Conway*, 17 A.D.2d 207, 234 N.Y.S.2d 435 (4th Dep't 1962).

A property owner's declaratory judgment action, seeking to declare his property as a legal three-family dwelling and to compel a town to issue a rental permit, could not serve as a basis to restrain enforcement of the town's criminal prosecution of property owner for renting the property without a permit where no constitutional issue was involved, the owner did not even question the legality of the town ordinance requiring a rental permit, and a factual dispute existed as to the classification of the property. *Cooper v. Town of Islip*, 56 A.D.3d 511, 867 N.Y.S.2d 205 (2d Dep't 2008).

[FN4] *F. X. Maltz, Ltd. v. Morgenthau*, 556 F.2d 123 (2d Cir. 1977).

[FN5] *Oppenheimer v. Clifton's Brookdale*, 98 Cal. App. 2d 403, 220 P.2d 422 (2d Dist. 1950); *Ahern v. Baker*, 148 Colo. 408, 366 P.2d 366 (1961); *Bird v. Rozier*, 948 P.2d 888 (Wyo. 1997).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 54

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
B. Statutes and Ordinances

[Topic Summary Correlation Table](#)

Research References

West's Key Number Digest


West's Key Number Digest, [Declaratory Judgment](#)  [81](#), [82](#), [84](#), [91](#), [95](#), [121](#) to [129](#), [201](#), [207.1](#), [208](#)

A.L.R. Library

A.L.R. Index, Declaratory Judgments

A.L.R. Index, Elections and Voting

A.L.R. Index, Uniform Declaratory Judgments Act

West's A.L.R. Digest, Declaratory Judgments  [81](#), [82](#), [84](#), [91](#), [95](#), [121](#) to [129](#), [201](#), [207.1](#), [208](#)

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS III B REF

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
B. Statutes and Ordinances
1. In General

[Topic Summary Correlation Table References](#)

§ 55. Construction and validity, generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  [122.1](#), [123](#), [124.1](#), [128](#), [129](#)

Forms

[Am. Jur. Pleading and Practice Forms, Declaratory Judgments § 16](#) (Complaint, petition, or declaration—To determine constitutionality of statute or ordinance—To enjoin enforcement of statute or ordinance)

[Am. Jur. Pleading and Practice Forms, Declaratory Judgments § 50](#) (Judgment or decree—Declaratory relief—Declaring statute void and enjoining enforcement)

One of the methods to test the constitutional validity of a statute,[1] or a regulation of general application,[2] is through a declaratory judgment action, provided that the parties challenging the statute meet jurisdictional and procedural requirements, such as standing,[3] and justiciability,[4] and subject to the appropriate standards applicable to determining the constitutionality of challenged statutes, including deference to the legislature where the statute is rationally related to a legitimate legislative objective.[5] By settling questions touching the constitutionality of statutes, the consequences of proceeding under void enactments are avoided.[6] Consequently, declaratory judgments are frequently employed to determine questions relating to the construction or validity of statutes[7] and ordinances.[8] A declaratory judgment is also the proper method of challenging the constitutionality of the provisions in a general appropriations act.[9]

The Uniform Declaratory Judgments Act specifically provides that the construction or validity of statutes and municipal ordinances may be determined by declaratory judgment.[10] The Act furnishes a particularly appropriate method for the determination of controversies relative to the construction and validity of statutes and ordinances.[11]

Declaratory judgments regarding the validity or construction of statutes may be rendered even though the applicable declaratory judgment statute does not so provide in express terms.[12] However, where the Act authorizing a declaratory judgment in a limited number of situations cannot be reasonably construed as empowering the court to determine the validity of a statute, declaratory relief must be denied. Thus, under an act limiting

declaratory judgments to the construction of deeds, wills, or written contracts, a court may refuse to pass upon the validity of an unemployment insurance statute.[13]

Observation:

The legislature's common-law immunity from civil rights actions extends to suits for declaratory and injunctive relief.[14]

[FN1] *Idaho Endowment Fund Inv. Bd. v. Crane*, 135 Idaho 667, 23 P.3d 129, 153 Ed. Law Rep. 973 (2001); *Liability Investigative Fund Effort, Inc. v. Medical Malpractice Joint Underwriting Ass'n of Massachusetts*, 40 Mass. 734, 569 N.E.2d 797 (1991); *Milwaukee Dist. Council 48 v. Milwaukee County*, 2001 WI 65, 244 Wis. 2d 333, 627 N.W.2d 866 (2001).

[FN2] *Doe v. Sex Offender Registry Bd.*, 459 Mass. 603, 947 N.E.2d 9 (2011).

[FN3] §§ 59 to 63.

[FN4] § 58.

[FN5] *Stallone v. Abrams*, 183 A.D.2d 555, 584 N.Y.S.2d 535 (1st Dep't 1992).

As to determinations of the constitutionality of legislation, generally, see *Am. Jur. 2d, Constitutional Law* §§ 107 to 213.

[FN6] *Klein v. Jefferson County Building & Loan Ass'n*, 239 Ala. 460, 195 So. 593 (1940).

[FN7] *Ezell v. City of Chicago*, 651 F.3d 684 (7th Cir. 2011); *Board of Educ. of Shelby County, Tenn. v. Memphis City Bd. of Educ.*, 911 F. Supp. 2d 631, 293 Ed. Law Rep. 272 (W.D. Tenn. 2012); *Univ. of Toledo Chapter, Am. Assn. of Univ. Professors v. Univ. of Toledo Bd. of Trustees*, 2012-Ohio-3618, 975 N.E.2d 531, 284 Ed. Law Rep. 1075 (Ohio Ct. App. 6th Dist. Lucas County 2012); *Dean v. State ex rel. Doak*, 2012 OK CIV APP 105, 292 P.3d 58 (Div. 2 2012), cert. denied, (Nov. 5, 2012); *Southeastern Pennsylvania Transp. Authority v. City of Philadelphia*, 20 A.3d 558 (Pa. Commw. Ct. 2011), appeal granted, 65 A.3d 292 (Pa. 2013).

As to the validity and construction of statutes relating to the rights, powers, duties, and obligations of public officers and authorities, see § 77.

As to the validity and construction of statutes relating to taxation, see §§ 98 to 108.

[FN8] *City of Monterey v. Carrnshimba*, 215 Cal. App. 4th 1068, 156 Cal. Rptr. 3d 1 (6th Dist. 2013); *East Naples Water Systems, Inc. v. Board of County Com'rs of Collier County*, 457 So. 2d 1057 (Fla. 2d DCA 1984); *St. George Greek Orthodox Cathedral of WesternMassachusetts, Inc. v. Fire Dept. of Springfield*, 462 Mass. 120, 967 N.E.2d 127 (2012); *McCaughtry v. City of Red Wing*, 808 N.W.2d 331 (Minn. 2011); *Walters v. State ex rel. Wyoming Dept. of Transp.*, 2013 WY 59, 300 P.3d 879 (Wyo. 2013).

[FN9] *Brown v. Firestone*, 382 So. 2d 654 (Fla. 1980).

[FN10] Unif. Declaratory Judgments Act § 2.

[FN11] *Klein v. Jefferson County Building & Loan Ass'n*, 239 Ala. 460, 195 So. 593 (1940); *Jones v. Clark*, 278 Ark. 119, 644 S.W.2d 257 (1983); *Chronicle & Gazette Pub. Co. v. Attorney General*, 94 N.H. 148, 48 A.2d 478, 168 A.L.R. 879 (1946); *Pratter v. Lascoff*, 140 Misc. 211, 249 N.Y.S. 211 (Sup 1931), *aff'd*, 236 A.D. 713, 258 N.Y.S. 1002 (4th Dep't 1932), *aff'd*, 261 N.Y. 509, 185 N.E. 716 (1933).

[FN12] *Abbott v. City of Los Angeles*, 53 Cal. 2d 674, 3 Cal. Rptr. 158, 349 P.2d 974, 82 A.L.R.2d 385 (1960).

[FN13] *Daniel v. Conestee Mills*, 183 S.C. 337, 191 S.E. 76 (1937).

[FN14] *Lightfoot v. State of Me. Legislature*, 583 A.2d 694 (Me. 1990).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 55

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
B. Statutes and Ordinances
1. In General

[Topic Summary Correlation Table References](#)

§ 56. Federal Declaratory Judgment Act

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  [122.1](#), [123](#), [124.1](#)

The provisions of federal law authorizing federal courts to render declaratory judgments^[1] may be invoked as a means of evaluating the constitutionality of congressional legislation.^[2] When a plaintiff has a legal claim under federal law, the Declaratory Judgment Act allows such party to obtain a federal court declaration of its rights under that federal statute.^[3]

Observation:

The case or controversy requirement for the exercise of federal jurisdiction is no less strict when a party is seeking declaratory judgment than for any other relief.^[4]

The federal provisions may also be used for the purpose of determining the constitutionality of state legislation, such as evaluating whether a state statute allowing for the commitment of mentally ill individuals who are not a threat to themselves and/or are able to make a rational decision as to treatment is overly broad and impermissibly vague.^[5] A declaratory judgment may be used to determine whether a state statute is in conflict with a federal statute and therefore invalid under the Supremacy Clause.^[6]

^[FN1] 28 U.S.C.A. § 2201.

^[FN2] *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 98 S. Ct. 2620, 57 L. Ed. 2d 595 (1978).

As to determinations of the constitutionality of legislation, generally, see [Am. Jur. 2d, Constitutional Law](#) §§ 107 to 213.

^[FN3] *Gem County Mosquito Abatement Dist. v. E.P.A.*, 398 F. Supp. 2d 1 (D.D.C. 2005).

[FN4] *Federal Exp. Corp. v. Air Line Pilots Ass'n*, 67 F.3d 961 (D.C. Cir. 1995).

As to justiciability in declaratory actions, generally, see §§ 21 to 35.

[FN5] *Colyar v. Third Judicial Dist. Court for Salt Lake County*, 469 F. Supp. 424 (D. Utah 1979).

[FN6] *U.S. v. State of Wis.*, 395 F. Supp. 732 (W.D. Wis. 1975).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 56

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
B. Statutes and Ordinances
1. In General

[Topic Summary Correlation Table References](#)

§ 57. Requirement of strict necessity in cases involving constitutional issues

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  [121](#), [123](#)

The general introduction of declaratory judgment procedure in both state and federal spheres has not reversed or modified the general direction or effects of the policy of not deciding constitutional issues unless strict necessity requires.^[1] Suits, including actions for declaratory judgment, that in effect call for advisory opinions are not allowed.^[2]

The objection that a statute is too vague and uncertain to meet constitutional requirements is one which cannot appropriately be considered in a declaratory judgment proceeding in the federal courts, in advance of an authoritative construction of the statute by a state court, since the use of the declaratory judgment procedure under such circumstances would invite, rather than avoid, the unnecessary decision of the constitutional question.^[3] A state court, in a declaratory judgment proceeding to secure an interpretation of a state statute, may decide definitively only questions of state law that are not subject to overriding federal law.^[4]

[FN1] *Rescue Army v. Municipal Court of City of Los Angeles*, 331 U.S. 549, 67 S. Ct. 1409, 91 L. Ed. 1666 (1947).

As to determinations of the constitutionality of legislation, generally, see [Am. Jur. 2d, Constitutional Law §§ 107 to 213](#).

[FN2] *Jester Development Corp. v. Travis County Appraisal Dist.*, 775 S.W.2d 464 (Tex. App. Austin 1989).

[FN3] *Alabama State Federation of Labor, Local Union No. 103, United Broth. of Carpenters and Joiners of America v. McAdory*, 325 U.S. 450, 65 S. Ct. 1384, 89 L. Ed. 1725 (1945).

[FN4] *Leiter Minerals, Inc. v. U.S.*, 352 U.S. 220, 77 S. Ct. 287, 1 L. Ed. 2d 267 (1957).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 57

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
B. Statutes and Ordinances
1. In General

[Topic Summary Correlation Table References](#)

§ 58. Necessity of justiciable controversy

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  81, 122.1, 123

In order to serve as a basis for declaratory relief, a controversy involving a statute or ordinance must be justiciable;[1] that is, there must be specific adverse claims, based upon present rather than future or speculative facts, which are ripe for judicial adjustment.[2] No federal court has jurisdiction to pronounce any statute, either of a state or of the United States, void, because irreconcilable with the constitution, except as it is called upon to adjudge the legal rights of litigants in actual controversies.[3] A mere difference of opinion as to the constitutionality of legislation does not afford a basis for declaratory relief.[4] Similarly, a mere difference of opinion or uncertainty over the meaning to be ascribed to a statute does not, without more, rise to the level of a justiciable controversy.[5] Rather, there must be a real dispute[6] caused by the assertion of one party of a legal relation, right, or status in which he or she has a definite interest, and the denial of such assertion by another party also having a definite interest in the subject matter, and the circumstances attending the dispute plainly indicate that unless the matter is adjusted, such antagonistic claims will almost immediately and inevitably lead to litigation.[7]

Observation:

The case or controversy requirement may be satisfied in an action seeking declaratory relief from a statute imposing civil liability, such as a statute making an abortion provider liable in tort to a woman obtaining an abortion, for any damage occasioned by the abortion notwithstanding that the statute is civil rather than criminal.[8]

The rule that there must be an actual controversy existing between adverse parties before a declaratory judgment will be rendered applies particularly where a court is asked to declare that a coordinate branch of the government has exceeded its power by passing a statute in violation of the fundamental or basic law.[9]

[FN1] *Developmental Pathways v. Ritter*, 178 P.3d 524 (Colo. 2008); *Gibson v. State*, 866 So. 2d 375 (La. Ct. App. 5th Cir. 2004), writ denied, 899 So. 2d 8 (La. 2005); *Northwest Animal Rights Network*

v. State, 158 Wash. App. 237, 242 P.3d 891 (Div. 1 2010).

A challenge to the constitutionality of a statute based upon United States law or self-executing provisions of the Virginia Constitution presents a justiciable controversy in a declaratory judgment action. *Daniels v. Mobley*, 285 Va. 402, 737 S.E.2d 895 (2013).

[FN2] *Golden v. Zwickler*, 394 U.S. 103, 89 S. Ct. 956, 22 L. Ed. 2d 113 (1969); *Colyar v. Third Judicial Dist. Court for Salt Lake County*, 469 F. Supp. 424 (D. Utah 1979); *Swartz v. Department of Banking and Ins.*, 376 Mass. 593, 382 N.E.2d 1050 (1978).

As to justiciability in declaratory actions, generally, see §§ 21 to 35.

[FN3] *Golden v. Zwickler*, 394 U.S. 103, 89 S. Ct. 956, 22 L. Ed. 2d 113 (1969).

As to determinations of the constitutionality of legislation, generally, see *Am. Jur. 2d, Constitutional Law* §§ 107 to 213.

[FN4] *American Federation of Labor v. Bain*, 165 Or. 183, 106 P.2d 544, 130 A.L.R. 1278 (1940).

As to determinations of the constitutionality of legislation, generally, see *Am. Jur. 2d, Constitutional Law* §§ 107 to 213.

[FN5] *Department of Community Affairs v. Massachusetts State College Bldg. Authority*, 378 Mass. 418, 392 N.E.2d 1006 (1979).

[FN6] *Santana v. Registrars of Voters of Worcester*, 384 Mass. 487, 425 N.E.2d 745 (1981).

[FN7] *Department of Community Affairs v. Massachusetts State College Bldg. Authority*, 378 Mass. 418, 392 N.E.2d 1006 (1979).

[FN8] *Okpalobi v. Foster*, 190 F.3d 337 (5th Cir. 1999), on reh'g en banc, 244 F.3d 405 (5th Cir. 2001).

[FN9] *Oregon Creamery Mfrs. Ass'n v. White*, 159 Or. 99, 78 P.2d 572 (1938).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 58

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
B. Statutes and Ordinances
2. Interest Necessary to Maintain Action; Standing

[Topic Summary Correlation Table References](#)

§ 59. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  82, 121, 123

In order for a controversy as to a statute or ordinance to justify declaratory relief, the party maintaining the action must have a substantial or legally protectable interest in the subject matter of the litigation,[1] and to establish such an interest, persons maintaining the action must show that they will be adversely affected by the enforcement of the statute or ordinance in question.[2] A plaintiff may challenge the constitutionality of an ordinance through a declaratory judgment proceeding by producing evidence that the plaintiff has sustained an injury or is in immediate danger of sustaining an injury as a result of enforcement of the challenged ordinance.[3]

Where there is no one before the court adversely affected by the provisions of certain statutes and no one who has any real interest in questions raised with regard thereto, a declaration construing the statutes will not be made.[4] In a declaratory judgment proceeding challenging the constitutionality of a statute, the plaintiff may be required to have an interest in the statute, special or peculiar to the plaintiff, and not merely an interest in common with the public generally.[5] The mere contemplation of a course of action in the future, which may have an impact on the plaintiff, does not render an issue ripe for seeking declaratory relief.[6]

[FN1] *Fina Oil and Chemical Co. v. Ewen*, 123 F.3d 1466 (Fed. Cir. 1997); *Best v. Taylor Mach. Works*, 179 Ill. 2d 367, 228 Ill. Dec. 636, 689 N.E.2d 1057 (1997).

As to the requirement of an actual controversy and the interest of parties in declaratory judgment actions, generally, see § 30.

[FN2] *Alabama State Federation of Labor, Local Union No. 103, United Broth. of Carpenters and Joiners of America v. McAdory*, 325 U.S. 450, 65 S. Ct. 1384, 89 L. Ed. 1725 (1945); *Wake Cares, Inc. v. Wake County Bd. of Educ.*, 190 N.C. App. 1, 660 S.E.2d 217, 231 Ed. Law Rep. 951 (2008), decision *aff'd*, 363 N.C. 165, 675 S.E.2d 345 (2009); *Dean v. State ex rel. Doak*, 2012 OK CIV APP 105, 292 P.3d 58 (Div. 2 2012), cert. denied, (Nov. 5, 2012).

For example, members of municipal police and fire departments were entitled to seek a declaratory judgment to determine the validity of an ordinance that would force their retirements. [Choura v. City of Cleveland](#), 44 Ohio Misc. 39, 73 Ohio Op. 2d 107, 336 N.E.2d 467 (C.P. 1975).

As to interest necessary to maintain declaratory judgment action to determine validity of a criminal statute or ordinance, see §§ [64](#), [65](#).

As to interest necessary to maintain declaratory judgment action to determine validity of a zoning ordinance, see §§ [69](#) to [71](#).

[FN3] [Andrews v. Alamance County](#), 132 N.C. App. 811, 513 S.E.2d 349 (1999).

[FN4] [Day v. Board of Regents of University of Ariz.](#), 44 Ariz. 277, 36 P.2d 262 (1934).

[FN5] [Greer v. Lewiston Golf & Country Club, Inc.](#), 81 Idaho 393, 342 P.2d 719 (1959); [Asendorf v. Common School Dist. No. 102 of Sedgwick County](#), 175 Kan. 601, 266 P.2d 309 (1954); [State ex rel. Smith v. Haveland](#), 223 Minn. 89, 25 N.W.2d 474, 174 A.L.R. 544 (1946); [Torigian v. Saunders](#), 77 S.D. 610, 97 N.W.2d 586 (1959).

As to determinations of the constitutionality of legislation, generally, see [Am. Jur. 2d, Constitutional Law](#) §§ [107](#) to [213](#).

[FN6] [Nationwide Mut. Ins. Co. v. Cisneros](#), 52 F.3d 1351, 1995 FED App. 0130P (6th Cir. 1995).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 59

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
B. Statutes and Ordinances
2. Interest Necessary to Maintain Action; Standing

[Topic Summary Correlation Table References](#)

§ 60. Persons whose civil or political rights are affected by statute

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 82, 84, 91, 124.1

An individual whose civil or political rights are directly affected by a statute may have the necessary interest to challenge the validity of the statute by a declaratory judgment proceeding provided that he or she can show a particularized injury arising to him or her from the application of the statute.[1] Thus, a resident of a municipality who cannot use transportation facilities therein without being subjected by statute to special disabilities has a substantial, immediate, and real interest in the validity of the statute which imposes the disability so as to be in a position to attack the statute, and it is immaterial that he or she may have used a particular facility for the purpose of instituting the litigation.[2] While a civil rights plaintiff cannot maintain declaratory or injunctive action unless he or she can demonstrate a good chance of being injured in the future,[3] the fact that a statute or ordinance may be applicable to the rights or interests of a person at some future time does not give such person sufficient standing to test the validity of the statute or ordinance.[4] Thus, an alleged likelihood that unnamed class members would suffer injuries in the future will not support injunctive or declaratory relief in a civil rights action challenging the practices of border patrol officers.[5]

Where a statute allegedly has a significant impact on procedure in criminal cases, affecting defendants' rights, and the issues cannot be authoritatively settled in the individual criminal cases, raising the constitutional challenge by seeking declaratory relief may be appropriate.[6]

Observation:

Declaratory judgment claims that are in the nature of habeas corpus claims, that is, that challenge the validity of a claimant's conviction or sentence and seek release, are not cognizable under a civil rights statute.[7]

[FN1] [Zaleski v. Burns](#), 606 F.3d 51 (2d Cir. 2010) (a convicted felon lacked standing to assert declaratory and equitable claims under the civil remedies provision of the Racketeer Influenced and Corrupt Organizations Act).

[FN2] *Evers v. Dwyer*, 358 U.S. 202, 79 S. Ct. 178, 3 L. Ed. 2d 222 (1958).

[FN3] *Barney v. Pulsipher*, 143 F.3d 1299 (10th Cir. 1998).

[FN4] *West v. Bank of Commerce & Trusts*, 153 F.2d 566, 174 A.L.R. 848 (C.C.A. 4th Cir. 1946); *Vincent Realty Co. v. Brown*, 344 Mo. 438, 126 S.W.2d 1162 (1939); *Oregon Creamery Mfrs. Ass'n v. White*, 159 Or. 99, 78 P.2d 572 (1938).

[FN5] *Hodgers-Durgin v. de la Vina*, 199 F.3d 1037 (9th Cir. 1999).

[FN6] *Simeon v. Hardin*, 339 N.C. 358, 451 S.E.2d 858 (1994).

As to the use of declaratory judgment proceedings to determine the validity or construction of a criminal statute, generally, see §§ 64 to 68.

[FN7] *Abella v. Rubino*, 63 F.3d 1063 (11th Cir. 1995).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 60

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
B. Statutes and Ordinances
2. Interest Necessary to Maintain Action; Standing

[Topic Summary Correlation Table References](#)

§ 61. Persons with duty to enforce law

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  [82](#), [121](#), [123](#)

One whose duty it is to enforce the law, such as an attorney general, is entitled to bring a declaratory judgment action concerning the validity of such law.[1] Where a statute authorizes the attorney general to bring an information in equity for a declaratory decree as to the validity of certain types of ordinances, the attorney general has the power to proceed with no more controversy than that brought about by the bringing of the information.[2]

There may be a justiciable controversy and a sufficient interest to bring a declaratory judgment action against the person charged with the duty of enforcing the challenged provisions of law where that person has informed the plaintiff of an intent to enforce the law.[3]

[FN1] *State ex rel. Sullivan v. Price*, 49 Ariz. 19, 63 P.2d 653, 108 A.L.R. 1156 (1937).

[FN2] *Attorney General v. Inhabitants of Town of Dover*, 327 Mass. 601, 100 N.E.2d 1 (1951).

[FN3] *Treasured Arts, Inc. v. Watson*, 319 S.C. 560, 463 S.E.2d 90 (1995).

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
B. Statutes and Ordinances
2. Interest Necessary to Maintain Action; Standing

[Topic Summary Correlation Table References](#)

§ 62. Persons in regulated businesses or professions

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  [82](#), [95](#), [121](#), [123](#), [127](#)

Persons engaged in a business regulated, or subjected to licensing,[1] such as engineers,[2] ambulance attendants,[3] junk dealers,[4] accountants,[5] operators of loan businesses,[6] and pipe fitters,[7] are generally considered to have sufficient interest to maintain a declaratory judgment action testing the validity of the statute or ordinance under which they are regulated or licensed. This is also true of persons engaged in occupations or professions subject to regulation by statute or ordinance,[8] such as physicians.[9] psychologists,[10] and optometrists.[11]

[FN1] *Lord v. Garland*, 27 Cal. 2d 840, 168 P.2d 5 (1946); *Quad Canteen Service Corp. v. Ruzak*, 85 Ill. App. 3d 256, 40 Ill. Dec. 610, 406 N.E.2d 616 (2d Dist. 1980) (validity of ordinance requiring fee on each coin-vending machine).

[FN2] *Millett v. Hoisting Engineers' Licensing Division of Dept. of Labor*, 119 R.I. 285, 377 A.2d 229 (1977).

[FN3] *Roth v. Daley*, 119 Ill. App. 2d 462, 256 N.E.2d 166 (1st Dist. 1970).

[FN4] *Vermont Salvage Corp. v. Village of St. Johnsbury*, 113 Vt. 341, 34 A.2d 188 (1943).

[FN5] *Junco v. State Bd. of Accountancy*, 390 So. 2d 329 (Fla. 1980).

[FN6] *Acme Finance Co. v. Huse*, 192 Wash. 96, 73 P.2d 341, 114 A.L.R. 1345 (1937).

[FN7] *Wilson v. City of Cincinnati*, 171 Ohio St. 104, 12 Ohio Op. 2d 129, 168 N.E.2d 147 (1960).

[FN8] *Brown v. Foley*, 158 Fla. 734, 29 So. 2d 870 (1947).

[FN9] *Northland Family Planning Clinic, Inc. v. Cox*, 487 F.3d 323, 2007 FED App. 0205P (6th Cir. 2007); *Davis v. State*, 183 Md. 385, 37 A.2d 880 (1944); *North Carolina Dept. of Correction v. North Carolina Medical Bd.*, 363 N.C. 189, 675 S.E.2d 641 (2009).

[FN10] *Pitts v. State Bd. of Examiners of Psychologists*, 222 Md. 224, 160 A.2d 200, 81 A.L.R.2d 787 (1960).

[FN11] *State ex rel. Bd. of Examiners in Optometry v. Lawton*, 1974 OK 69, 523 P.2d 1064 (Okla. 1974) (challenge based on potential criminal prosecution for practicing within the proximity of a retail optical outlet in violation of the challenged statute).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 62

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
B. Statutes and Ordinances
2. Interest Necessary to Maintain Action; Standing

[Topic Summary Correlation Table References](#)

§ 63. Public employees

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  [82](#), [121](#), [123](#), [126](#), [201](#), [207.1](#), [208](#)

Public employees subject to a statute or ordinance directly or peculiarly affecting them have the requisite interest to challenge the validity of such statute or ordinance.^[1] Thus, firefighters whose working conditions are governed by a local ordinance have the requisite standing to institute an action for declaratory judgment to determine the validity of the ordinance.^[2] Also, a declaratory judgment is appropriate to determine the validity of a statute under which a civil service employee is fired,^[3] and ordinances governing wage categories subject to disputed construction are appropriate for declaratory relief.^[4] An action for a declaratory judgment may be properly refused, however, where it seeks a court ruling on the validity of legislative enactments not currently in existence.^[5]

[FN1] *Simpson v. Van Ryzin*, 289 Ala. 22, 265 So. 2d 569 (1972); *Perry v. City of Ft. Lauderdale*, 387 So. 2d 518 (Fla. 4th DCA 1980); *Hildebrandt v. Bailey*, 65 N.J. Super. 274, 167 A.2d 655 (App. Div. 1961).

[FN2] *Hildebrandt v. Bailey*, 65 N.J. Super. 274, 167 A.2d 655 (App. Div. 1961).

[FN3] *Simpson v. Van Ryzin*, 289 Ala. 22, 265 So. 2d 569 (1972).

[FN4] *Perry v. City of Ft. Lauderdale*, 387 So. 2d 518 (Fla. 4th DCA 1980).

[FN5] *Civil Service Commission v. Senate of State of N. J.*, 165 N.J. Super. 144, 397 A.2d 1098 (App. Div. 1979).

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
B. Statutes and Ordinances
3. Criminal or Penal Statutes and Ordinances

[Topic Summary Correlation Table References](#)

§ 64. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  122.1 to 124.1, 128

A.L.R. Library

[Validity, construction, and application of criminal statutes or ordinances as proper subject for declaratory judgment, 10 A.L.R.3d 727](#)

Although declaratory judgment proceedings cannot generally be used to decide matters properly determinable in criminal proceedings,[1] the general rule that the construction and validity of statutes may be determined by declaratory judgment[2] may allow a declaratory judgment in matters determining the validity of criminal or penal statutes,[3] including procedural provisions of law where there is no other reasonable remedy available to settle uncertainty as to valuable legal rights.[4] However, while a declaratory judgment action to determine the constitutionality of a criminal statute prior to prosecution is not completely barred,[5] limits on a district court's civil jurisdiction to construe or enjoin enforcement of a criminal statute apply as well to suits seeking declaratory relief.[6]

Observation:

An honest business person, whose activity is arguably within the scope of a criminal statute that is known for being diligently prosecuted and which may subject the individual to severe penalties, may seek a declaratory judgment as to such activities since it should be possible to resolve the legal correctness of the application of the statute without subjecting the business person to criminal penalties.[7]

Jurisdiction of a court to grant a declaratory judgment is not lacking merely because the construction or validity of a statute authorizing a fine and imprisonment is necessary to the decision.[8] Thus, an action seeking a declaration that meetings by certain state officials violate the state open meetings law may be maintained despite the fact that the law has penal consequences.[9]

[FN1] § 54.

[FN2] § 55.

[FN3] *Abbott v. City of Los Angeles*, 53 Cal. 2d 674, 3 Cal. Rptr. 158, 349 P.2d 974, 82 A.L.R.2d 385 (1960); *Midwest Messenger Ass'n v. Spire*, 223 Neb. 748, 393 N.W.2d 438, 78 A.L.R.4th 469 (1986); *State ex rel. Lynch v. Conta*, 71 Wis. 2d 662, 239 N.W.2d 313 (1976).

[FN4] *McGillivray v. State*, 1999 MT 3, 293 Mont. 19, 972 P.2d 804 (1999).

[FN5] *Malloy v. Cooper*, 356 N.C. 113, 565 S.E.2d 76 (2002).

[FN6] *Kubosh v. Harris County*, 2013 WL 1844217 (Tex. App. Houston 1st Dist. 2013).

A requested declaratory judgment, that a "Texas Hold 'Em" poker game did not constitute "illegal gambling" under a state statute, was inappropriate to vindicate any right held by a host of "Texas Hold 'Em" games against a criminal prosecution allegedly threatened by the Commonwealth's attorney; such a declaration would not impact any subsequent criminal proceeding and would be merely an advisory opinion. *Daniels v. Mobley*, 285 Va. 402, 737 S.E.2d 895 (2013).

[FN7] *New Hampshire Hemp Council, Inc. v. Marshall*, 203 F.3d 1 (1st Cir. 2000) (hemp farmer entitled to seek declaratory judgment regarding whether industrial hemp was marijuana under the federal drug laws).

[FN8] *Ostrander v. Linn*, 237 Iowa 694, 22 N.W.2d 223 (1946); *Kindy Opticians v. Michigan State Board of Examiners in Optometry*, 291 Mich. 152, 289 N.W. 112 (1939); *Liberty Mut. Ins. Co. v. Jones*, 344 Mo. 932, 130 S.W.2d 945, 125 A.L.R. 1149 (1939); *Dill v. Hamilton*, 137 Neb. 723, 291 N.W. 62, 129 A.L.R. 743 (1940).

[FN9] *State ex rel. Lynch v. Conta*, 71 Wis. 2d 662, 239 N.W.2d 313 (1976).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 64

END OF DOCUMENT

American Jurisprudence, Second Edition

Database updated August 2014

Declaratory Judgments

Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered

B. Statutes and Ordinances

3. Criminal or Penal Statutes and Ordinances

[Topic Summary Correlation Table References](#)

§ 65. Case or controversy requirement

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  122.1 to 124.1, 128

As in declaratory actions challenging statutes generally,[1] in actions challenging the validity or constitutionality of a criminal or penal statute, there must exist a justiciable controversy,[2] and where there is no case or controversy, an action for declaratory judgment is not appropriate.[3] Thus, a court will not, for example, grant a declaratory judgment in an action commenced by a "John Doe" where, because the identity of the person is unknown, it cannot be known whether or not he or she has a justiciable controversy with the named defendants.[4]

While a constitutional challenge against a statute is not frivolous, if the particular grounds articulated in the pleadings are frivolous, the court will lack jurisdiction to grant declaratory relief.[5] There is also some authority that declaratory judgments are not available to determine the constitutionality of a statute where the plaintiff's civil rights are not affected and where, if prosecuted, the plaintiff can set up the unconstitutionality of the statute as a defense.[6]

[FN1] § 58.

[FN2] *Huntsville-Madison County Airport Authority v. The Huntsville Times*, a Div. of *The Birmingham News Co.*, 564 So. 2d 904 (Ala. 1990); *Jegley v. Picado*, 349 Ark. 600, 80 S.W.3d 332 (2002); *State v. Rhoades*, 119 Idaho 594, 809 P.2d 455 (1991); *Associated Builders and Contractors v. Director of Consumer & Industry Services Director*, 472 Mich. 117, 693 N.W.2d 374 (2005) (overruled on other grounds by, *Lansing Schools Educ. Ass'n v. Lansing Bd. of Educ.*, 487 Mich. 349, 792 N.W.2d 686, 263 Ed. Law Rep. 360 (2010)); *Hitter v. McLeod*, 274 S.C. 616, 266 S.E.2d 418 (1980).

[FN3] *State of Mich. v. Meese*, 853 F.2d 395 (6th Cir. 1988); *Hitter v. McLeod*, 274 S.C. 616, 266 S.E.2d 418 (1980).

[FN4] *Lamb v. Doe*, 92 Nev. 550, 554 P.2d 732 (1976).

[FN5] *Crowley Cutlery Co. v. U.S.*, 849 F.2d 273 (7th Cir. 1988).

[FN6] *Chadwick v. Salter*, 254 N.C. 389, 119 S.E.2d 158 (1961).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 65

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
B. Statutes and Ordinances
3. Criminal or Penal Statutes and Ordinances

[Topic Summary Correlation Table References](#)

§ 66. Case or controversy requirement—Actual or threatened enforcement or prosecution

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  122.1 to 124.1, 128

Although a declaratory judgment is available so that plaintiffs will not have to violate a statute in order to attack its constitutional validity, the mere existence of a statute or regulation does not raise a justiciable controversy; plaintiffs must demonstrate that they intend to engage in the proscribed conduct and that the officials charged with the regulation's enforcement have threatened to use sanctions against the plaintiffs. Without such a showing, a legal proceeding cannot be considered ripe for judicial attention.[1] Thus, while ordinarily a plaintiff is not required to violate a penal statute as a condition of having it construed,[2] let alone defer action until the party is arrested,[3] some jurisdictions may limit declaratory relief to instances where the plaintiff is threatened with imminent prosecution,[4] recognizing that an actual, threatened prosecution creates an actual controversy.[5] Thus, claims based on hypothetical applications of the challenged statute are not a sufficient basis for the granting of declaratory relief where there is no threat of prosecution based on the statute.[6] Moreover, a controversy based on prosecution under a statute becomes moot after criminal charges against the declaratory judgment plaintiff are dismissed for want of probable cause.[7]

A key factor in assessing the reality and immediacy of the threat of enforcement, and whether the threat is adverse and ripe for declaratory relief, is whether the State has expressly disavowed prosecution under or enforcement of the challenged statute.[8] A prosecutor's statement of an intent to prosecute if the challenging party engages in the proscribed activity may satisfy the requirement of an imminent or threatened prosecution.[9] Moreover, the right to maintain a declaratory judgment action with respect to the construction of a state law has been upheld even though the county district attorney bringing the action had stated an intent to not seek a conviction if the law was found to have been violated, the court reasoning that the need to have the law construed, to avoid possible future violations, rendered the controversy justiciable.[10]

Caution:

Following a conviction under a legislative enactment, a direct appeal, and not a separate action for declaratory judgment, is the appropriate remedy for defendants' challenge to the constitutionality of the enactment.[11]

[FN1] *Smith v. Boyer*, 442 F. Supp. 62 (W.D. N.Y. 1977).

[FN2] *Jegley v. Picado*, 349 Ark. 600, 80 S.W.3d 332 (2002); *Dill v. Hamilton*, 137 Neb. 723, 291 N.W. 62, 129 A.L.R. 743 (1940); *Farley v. Graney*, 146 W. Va. 22, 119 S.E.2d 833 (1960).

[FN3] *Strager v. Olsen*, 10 Mich. App. 166, 159 N.W.2d 175 (1968).

[FN4] *Woolf v. Fuller*, 87 N.H. 64, 174 A. 193, 94 A.L.R. 1067 (1934).

A petitioner convicted of battery of a police officer requiring medical attention did not have a real or actual interest in having the statute under which he was convicted declared unconstitutional and, therefore, had no justiciable controversy as required to bring a declaratory judgment action challenging the constitutionality of the statute; the petitioner's conviction and sentence were final, and he was not currently threatened with prosecution under the statute. *Hughes v. Connick*, 942 So. 2d 1076 (La. Ct. App. 5th Cir. 2006).

[FN5] *Pack v. City of Cleveland*, 1 Ohio St. 3d 129, 438 N.E.2d 434, 35 A.L.R.4th 1223 (1982) (rejected on other grounds by, *State v. Baker*, 11 Kan. App. 2d 4, 711 P.2d 759 (1985)).

[FN6] *Wills v. O'Grady*, 86 Ill. App. 3d 775, 42 Ill. Dec. 522, 409 N.E.2d 17 (1st Dist. 1980).

[FN7] *Ramirez v. Sanchez Ramos*, 438 F.3d 92 (1st Cir. 2006).

[FN8] *Tait v. City of Philadelphia*, 639 F. Supp. 2d 582 (E.D. Pa. 2009), *aff'd*, 410 Fed. Appx. 506 (3d Cir. 2011).

[FN9] *Malloy v. Cooper*, 356 N.C. 113, 565 S.E.2d 76 (2002).

[FN10] *State ex rel. Lynch v. Conta*, 71 Wis. 2d 662, 239 N.W.2d 313 (1976).

[FN11] *Sandoval v. State ex rel. Wyoming Dept. of Transp.*, 2012 WY 160, 291 P.3d 290 (Wyo. 2012).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 66

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
B. Statutes and Ordinances
3. Criminal or Penal Statutes and Ordinances

[Topic Summary Correlation Table References](#)

§ 67. Actions against public officials

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 122.1 to 124.1

Resort to the remedy of declaratory judgment may be had against a public official or public agency whose duty it is to conduct appropriate prosecutions if the purpose is to avoid irreparable injury and if the sole question is one of law.[1] To deny declaratory relief to one who claims a penal statute does not apply to him or her would be to force that person to choose between undesirable alternatives.[2]

The use of the declaratory judgment procedure is an effective method of overcoming any attempt by local government officials to impose extralegal censorship, for example, and since the question of whether a particular book is obscene is a question of law, a declaratory judgment action by a bookseller threatened with prosecution for violation of the penal law is appropriate.[3] Thus, if a legitimate business person cannot obtain a declaration as to whether the obscenity statute applies to a given book, the business person is faced with this choice: if he or she sells the book, he or she incurs the risk of criminal prosecution and conviction, or the business person may sustain the stigma that attaches even though he or she is ultimately found innocent; if the business person does not sell the book, he or she becomes a self-appointed censor or permits the city attorney to become an indirect censor of public reading matter. In addition, a potential buyer of the book will be deprived of the constitutional right to read unless declaratory relief is available or unless that person can find a bookseller willing to face the possibility of criminal prosecution.[4]

[FN1] *Bunis v. Conway*, 17 A.D.2d 207, 234 N.Y.S.2d 435 (4th Dep't 1962).

[FN2] *New Hampshire Hemp Council, Inc. v. Marshall*, 203 F.3d 1 (1st Cir. 2000); *Zeitlin v. Arnebergh*, 59 Cal. 2d 901, 31 Cal. Rptr. 800, 383 P.2d 152, 10 A.L.R.3d 707 (1963).

[FN3] *Bunis v. Conway*, 17 A.D.2d 207, 234 N.Y.S.2d 435 (4th Dep't 1962).

[FN4] *Zeitlin v. Arnebergh*, 59 Cal. 2d 901, 31 Cal. Rptr. 800, 383 P.2d 152, 10 A.L.R.3d 707 (1963).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 67

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
B. Statutes and Ordinances
3. Criminal or Penal Statutes and Ordinances

[Topic Summary Correlation Table References](#)

§ 68. Actions by persons with duty to enforce law

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  [122.1](#) to [124.1](#), [128](#)

While those charged with law enforcement are not encouraged to petition for declaratory judgments, such cases will be accepted in the exercise of the court's discretion, such exercise being guided by the normal principles of declaratory judgment. In most cases, such action should, however, be refused until the order of the parties is reversed so that the party subject to the penal law is the plaintiff.^[1] Implicit recognition of this limited outlet to prosecutors is found in some state statutes which allow a declaratory judgment on whether an item is obscene.^[2]

[FN1] [State ex rel. Lynch v. Conta, 71 Wis. 2d 662, 239 N.W.2d 313 \(1976\).](#)

[FN2] [Gerstein v. "Pleasure Was My Business", 136 So. 2d 8 \(Fla. 3d DCA 1961\); State ex rel. Lynch v. Conta, 71 Wis. 2d 662, 239 N.W.2d 313 \(1976\).](#)

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 68

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
B. Statutes and Ordinances
4. Zoning Ordinances

[Topic Summary Correlation Table References](#)

§ 69. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  129

Zoning ordinances are subject to declaratory judgment actions,[1] including a declaratory judgment regarding the validity of amendments to zoning ordinances,[2] as well as challenges to the exaction of a recreational fee under an allegedly invalid local law.[3] Thus, an owner of land restricted or adversely affected in use by a zoning ordinance may bring proceedings for a declaratory judgment as to the validity or constitutionality of the ordinance.[4] However, in an action for a declaratory judgment respecting the application and validity of certain zoning regulations as they affect certain property of the plaintiff, a declaration should not be made as to alleged vested rights of third persons who have purchased lots from the plaintiff on the installment plan but who have not yet received deeds where such purchasers are not parties to the action.[5]

Caution:

The decision of a zoning hearing board granting a variance may not be appealed by a declaratory judgment action that is not timely filed following the decision.[6]

[FN1] *Burns Holdings, LLC v. Madison County Bd. of County Com'rs*, 147 Idaho 660, 214 P.3d 646 (2009); *Bog Lake Co. v. Town of Northfield*, 2008 ME 37, 942 A.2d 700 (Me. 2008); *Anderson House, LLC v. Mayor and City Council of Rockville*, 402 Md. 689, 939 A.2d 116 (2008); *Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162 (Minn. 2006).

As to the validity of zoning ordinances, generally, see *Am. Jur. 2d, Zoning and Planning* §§ 27 to 51.

[FN2] *Foster v. City of St. Anthony*, 122 Idaho 883, 841 P.2d 413 (1992); *Bradley v. City of Manchester*, 141 N.H. 329, 682 A.2d 1194, 113 Ed. Law Rep. 333 (1996); *East Suffolk Development Corp. v. Town Bd. of Town of Riverhead*, 59 A.D.3d 661, 874 N.Y.S.2d 216 (2d Dep't 2009).

[FN3] *Kamhi v. Town of Yorktown*, 141 A.D.2d 607, 529 N.Y.S.2d 528 (2d Dep't 1988), order aff'd, 74

N.Y.2d 423, 548 N.Y.S.2d 144, 547 N.E.2d 346 (1989).

[FN4] *Friedman v. City of Fairfax*, 81 Cal. App. 3d 667, 146 Cal. Rptr. 687 (1st Dist. 1978); *Stokes v. City of Mishawaka*, 441 N.E.2d 24 (Ind. Ct. App. 1982); *Bog Lake Co. v. Town of Northfield*, 2008 ME 37, 942 A.2d 700 (Me. 2008); *Graham v. City of Raleigh*, 55 N.C. App. 107, 284 S.E.2d 742 (1981); *Paris v. Mayfield Village*, 14 Ohio App. 3d 450, 472 N.E.2d 57 (8th Dist. Cuyahoga County 1984).

[FN5] *Corsino v. Grover*, 148 Conn. 299, 170 A.2d 267, 95 A.L.R.2d 751 (1961).

[FN6] *Kallmann v. Carlisle Zoning Hearing Bd.*, 117 Pa. Commw. 499, 543 A.2d 1273 (1988).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 69

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
B. Statutes and Ordinances
4. Zoning Ordinances

[Topic Summary Correlation Table References](#)

§ 70. Necessity of actual controversy

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 129

In accordance with the general rules requiring an actual controversy in declaratory judgment actions challenging statutes and ordinances,[1] a declaratory judgment involving a zoning ordinance cannot be maintained unless an actual controversy exists;[2] that is, declaratory relief is not available for the granting of a merely advisory opinion as to the validity of a zoning ordinance[3] or future actions which might be taken by a zoning board.[4] However, when a statute or a regulation may adversely affect a plaintiff in the future, and when the plaintiff has standing to challenge the enactment, the plaintiff's action against the appropriate government official or agency, for a declaratory judgment or injunction based on the alleged invalidity of the enactment, represents a live controversy.[5]

An actual controversy exists, for example, where a landowner's property is zoned as residential, and the landowner maintains that it should properly have been zoned commercial.[6] An actual controversy may also exist where a town planning board has not yet rescinded its approval of a landowner's subdivision of lots in a development but has threatened to do so.[7]

Where a statute specifically authorizes the attorney general to bring an information in equity for a declaratory decree as to the validity of zoning ordinances, if a citizen asserts to the enforcing officer that there is a violation of a zoning ordinance and the officer fails to act, there is a controversy between them permitting declaratory relief, but there is no controversy if the citizen has not requested the officer to act.[8]

[FN1] § 58.

[FN2] *Environmental Defense Project of Sierra County v. County of Sierra*, 158 Cal. App. 4th 877, 70 Cal. Rptr. 3d 474 (3d Dist. 2008), as modified, (Jan. 9, 2008); *Gamache v. Town of Acushnet*, 14 Mass. App. Ct. 215, 438 N.E.2d 82 (1982); *Moore v. Middletown*, 133 Ohio St. 3d 55, 2012-Ohio-3897, 975 N.E.2d 977 (2012).

As to justiciability in declaratory actions, generally, see §§ 21 to 35.

[FN3] *City of Fairfax v. Shanklin*, 205 Va. 227, 135 S.E.2d 773 (1964).

[FN4] *Harrell v. Fulton County*, 272 Ga. App. 760, 612 S.E.2d 838 (2005).

[FN5] *Jackson v. Millstone*, 369 Md. 575, 801 A.2d 1034 (2002).

[FN6] *Meyer v. Madison County*, 7 Ill. App. 3d 289, 287 N.E.2d 159 (5th Dist. 1972).

[FN7] *McDavitt v. Planning Bd. of Winchester*, 5 Mass. App. Ct. 827, 362 N.E.2d 1211 (1977).

[FN8] *Woods v. City of Newton*, 349 Mass. 373, 208 N.E.2d 508 (1965).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 70

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
B. Statutes and Ordinances
4. Zoning Ordinances

[Topic Summary Correlation Table References](#)

§ 71. Standing

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 129

The availability of a declaratory judgment challenging a zoning ordinance may depend upon a party showing that it has title to or a possessory interest in the whole of the property involved,[1] but whether or not a person has such standing generally depends not so much on whether the person owns property within the area zoned but on whether the person is or may be adversely affected by the zoning ordinance.[2] In other words, a party seeking a declaratory judgment in regard to a zoning matter must demonstrate a particularized harm the party will suffer if relief is not granted.[3] Persons will not have standing if they are lacking a recognized interest, legal or equitable, in the property.[4] Thus, a property owner whose land is adjacent to land subject to a zoning amendment has standing to challenge the amendment notwithstanding that the owner's land is outside the zoning municipality but will lack standing if not aggrieved by the challenged ordinance.[5] The proximity of property to the zoned area may have a large bearing on whether or not the zoning will affect the property, particularly owners of property immediately adjacent to the rezoned area of land.[6]

Observation:

Even though the challenging party purchased the subject property subsequent to the zoning amendment, that party may still have standing to challenge the constitutionality of the ordinance.[7]

The federal rule makes standing contingent upon proof that a contested zoning restriction harms the plaintiffs in a personal way and that relief would confer a tangible benefit on them.[8] However, this rule has been said to be not binding on state courts since it was predicated on the Case or Controversy Clause of the United States Constitution, and some states have been more lenient in granting standing to nonproperty owners and their representatives in cases where zoning ordinances are challenged as discriminatory or in violation of some party's equal protection rights.[9]

Standing requirements may be relaxed somewhat in cases involving alleged violations of the First Amendment.[10] Standing also may be given to a party, such as an organization, with a real interest in the protection of an area.[11]

[FN1] *Chicago Title & Trust Co. v. Village of Mount Prospect*, 63 Ill. App. 3d 223, 20 Ill. Dec. 68, 379 N.E.2d 901 (1st Dist. 1978).

[FN2] *Sumter County v. Davis*, 356 So. 2d 899 (Fla. 2d DCA 1978).

[FN3] *Ciszek v. Kootenai County Bd. of Com'rs*, 151 Idaho 123, 254 P.3d 24 (2011).

[FN4] *Miller v. Fulton County*, 258 Ga. 882, 375 S.E.2d 864 (1989).

[FN5] *Orange Fibre Mills, Inc. v. City of Middletown*, 94 Misc. 2d 233, 404 N.Y.S.2d 296 (Sup 1978).

[FN6] *Bedford v. Board of County Com'rs of San Miguel County*, 41 Colo. App. 125, 584 P.2d 90 (App. 1978).

[FN7] *Cannon v. Coweta County*, 260 Ga. 56, 389 S.E.2d 329 (1990) (overruled on other grounds by, *King v. City of Bainbridge*, 276 Ga. 484, 577 S.E.2d 772 (2003)).

[FN8] *Warth v. Seldin*, 422 U.S. 490, 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1975).

[FN9] *Suffolk Housing Services v. Town of Brookhaven*, 91 Misc. 2d 80, 397 N.Y.S.2d 302 (Sup 1977), *aff'd as modified on other grounds*, 63 A.D.2d 731, 405 N.Y.S.2d 302 (2d Dep't 1978).

[FN10] *Veterans of Foreign Wars, Post 4264 v. City of Steamboat Springs*, 195 Colo. 44, 575 P.2d 835 (1978).

[FN11] *National Wildlife Federation Inc. v. Glisson*, 531 So. 2d 996 (Fla. 1st DCA 1988).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 71

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
B. Statutes and Ordinances
4. Zoning Ordinances

[Topic Summary Correlation Table References](#)

§ 72. Effect of existence of other remedies; exhaustion of administrative remedies

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 129

Recognizing that the availability of another adequate remedy may be a bar to obtaining declaratory relief,[1] in some jurisdictions, the exhaustion of administrative remedies may be required before an action for declaratory judgment with respect to a zoning matter is allowed,[2] which may include a requirement that the party first seek a variance;[3] the requirement prevents unnecessary judicial intervention into local affairs and promotes judicial economy.[4] The requirement that a landowner challenging a zoning ordinance must exhaust his or her administrative remedies before filing a declaratory judgment action is based on the principle that courts do not address issues based on circumstances which may never materialize; if the landowner can obtain a variance or other modification of the challenged ordinance as applied to his or her property, the landowner would no longer be prejudiced by the ordinance and would have no standing to attack the ordinance.[5] Where an ordinance is constitutionally valid on its face, and provides an administrative remedy for owners aggrieved by its implementation, the owners must first exhaust this administrative remedy before seeking a declaratory judgment as to the reasonableness of particular aspects of the ordinance.[6] However, landowners claiming an ordinance is invalid based on it being in conflict with and preempted by state law may not be required to exhaust administrative remedies prior to seeking a declaratory judgment.[7]

Other courts, while adhering to the doctrine, have held that failure to exhaust administrative remedies is not a jurisdictional defect,[8] and thus is not grounds for reversible error,[9] but may serve as an affirmative defense to a declaratory judgment action which may be waived if it is not timely asserted.[10]

The rule requiring the exhausting of administrative remedies may be applied to render a declaratory judgment unavailable to property owners contending, for example, that the conduct of township trustees[11] or county commissioners in not rezoning their property was arbitrary.[12] The rule may also require that appropriate appellate process be completed; where a party has a statutory right of appeal from the decision of an administrative agency, that party may not, instead of appealing, bring an independent action to test the very issue which the appeal was designed to test.[13]

[FN1] § 47.

[FN2] *City of Sunny Isles Beach v. Publix Super Markets, Inc.*, 996 So. 2d 238 (Fla. 3d DCA 2008); *Powell v. City of Snellville*, 266 Ga. 315, 467 S.E.2d 540 (1996); *Dail v. York County*, 259 Va. 577, 528 S.E.2d 447 (2000).

[FN3] *Lee County v. Morales*, 557 So. 2d 652 (Fla. 2d DCA 1990); *Blue Jay Realty Trust v. City of Franklin*, 132 N.H. 502, 567 A.2d 188 (1989).

[FN4] *Powell v. City of Snellville*, 266 Ga. 315, 467 S.E.2d 540 (1996).

[FN5] *Dail v. York County*, 259 Va. 577, 528 S.E.2d 447 (2000).

[FN6] *Suffolk Outdoor Advertising Co., Inc. v. Hulse*, 43 N.Y.2d 483, 402 N.Y.S.2d 368, 373 N.E.2d 263 (1977).

[FN7] *Dail v. York County*, 259 Va. 577, 528 S.E.2d 447 (2000).

[FN8] *Driscoll v. Austintown Associates*, 42 Ohio St. 2d 263, 71 Ohio Op. 2d 247, 328 N.E.2d 395 (1975); *Keller v. City of Bellingham*, 20 Wash. App. 1, 578 P.2d 881 (Div. 1 1978), judgment aff'd, 92 Wash. 2d 726, 600 P.2d 1276 (1979).

[FN9] *Keller v. City of Bellingham*, 20 Wash. App. 1, 578 P.2d 881 (Div. 1 1978), judgment aff'd, 92 Wash. 2d 726, 600 P.2d 1276 (1979).

[FN10] *Driscoll v. Austintown Associates*, 42 Ohio St. 2d 263, 71 Ohio Op. 2d 247, 328 N.E.2d 395 (1975).

[FN11] *English v. City of Carmel*, 178 Ind. App. 140, 381 N.E.2d 540 (1978).

[FN12] *Reeder v. King County*, 57 Wash. 2d 563, 358 P.2d 810 (1961).

[FN13] *Arrieu v. Town of Litchfield*, 17 Conn. App. 320, 552 A.2d 445 (1989).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 72

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
B. Statutes and Ordinances
4. Zoning Ordinances

[Topic Summary Correlation Table References](#)

§ 73. Effect of existence of other remedies; exhaustion of administrative remedies—Exceptions to requirement

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 129

In some jurisdictions, an action for declaratory judgment challenging a zoning ordinance may fall under an exception to the requirement that administrative remedies be exhausted.[1] Thus, while such questions as the absence of constitutional due process in the manner in which administrative agencies conduct proceedings, and which ordinances to apply, may come within the scope of the doctrine of exhaustion of remedies in some jurisdictions, other jurisdictions hold that a challenge to the constitutional validity of a zoning ordinance presents a question of law to which the doctrine does not apply.[2] In some jurisdictions, then, an ordinance may be challenged as facially unconstitutional without applying for a special permit.[3]

Not only are challenges alleging facial unconstitutionality but also those alleging excess exercise of statutory power or that an agency or board lacked jurisdiction are also exempted, in some courts, from the exhaustion of remedies requirement.[4] Similarly, claims that a rezoning constitutes an unconstitutional or arbitrary exercise of the police power may be exempted from the exhaustion of remedies requirement.[5] It is especially true that a failure to exhaust remedies will not bar an action for declaratory relief in such circumstances where the administrative agency which deals with zoning appeals has been established by the legislative body responsible for the zoning ordinances. Since such an agency has no right to declare unconstitutional an ordinance enacted by the legislative body from which it derives its existence, it cannot grant an adequate remedy to a person attacking the ordinance's validity.[6]

Some courts may qualify the exhaustion of remedies requirement by stating that it is not applicable where the alternative administrative remedy is unusually onerous,[7] or futile,[8] although establishing the futility of the exhaustion of administrative remedies when challenging a land use regulation is a substantial burden because of the strong public policies favoring the exhaustion doctrine.[9] A declaratory judgment proceeding, which is available as an alternative to challenging a zoning ordinance, may be a more practical and versatile method than an appeal under the statute governing appeals from orders of administrative officers and agencies since the issues must be narrowly drawn in such appeals whereas a declaratory judgment action may be more broadly

framed.[10]

Caution:

In some jurisdictions, state[11] or local[12] rules or statutes provide for the application for a writ of certiorari in certain zoning disputes; depending on the particular jurisdiction and the particular rule or statute, certiorari may or may not be considered an alternative remedy precluding declaratory judgment. Its availability is not a bar to declaratory relief where rezoning is considered to be a legislative function rather than a quasi-judicial function reviewable by certiorari.[13]

[FN1] *Foster v. City of St. Anthony*, 122 Idaho 883, 841 P.2d 413 (1992); *Bradley v. City of Manchester*, 141 N.H. 329, 682 A.2d 1194, 113 Ed. Law Rep. 333 (1996).

[FN2] *Kmiec v. Town of Spider Lake*, 60 Wis. 2d 640, 211 N.W.2d 471 (1973).

[FN3] *Province of Meribah Soc. of Mary, Inc. v. Village of Muttontown*, 148 A.D.2d 512, 538 N.Y.S.2d 850 (2d Dep't 1989).

[FN4] *Kingsley v. Miller*, 120 R.I. 372, 388 A.2d 357 (1978).

[FN5] *Dodge Mill Land Corp. v. Town of Amherst*, 61 A.D.2d 216, 402 N.Y.S.2d 670 (4th Dep't 1978).

[FN6] *Kmiec v. Town of Spider Lake*, 60 Wis. 2d 640, 211 N.W.2d 471 (1973).

[FN7] *Gates Mills Inv. Co. v. Village of Pepper Pike*, 44 Ohio St. 2d 73, 73 Ohio Op. 2d 321, 337 N.E.2d 777 (1975).

[FN8] *Wheeling Trust & Sav. Bank v. Village of Mount Prospect*, 64 Ill. App. 3d 1038, 21 Ill. Dec. 834, 382 N.E.2d 128 (1st Dist. 1978); *Presbytery of Seattle v. King County*, 114 Wash. 2d 320, 787 P.2d 907 (1990).

[FN9] *Presbytery of Seattle v. King County*, 114 Wash. 2d 320, 787 P.2d 907 (1990).

[FN10] *Central Motors Corp. v. City of Pepper Pike*, 63 Ohio App. 2d 34, 13 Ohio Op. 3d 347, 17 Ohio Op. 3d 240, 409 N.E.2d 258 (8th Dist. Cuyahoga County 1979).

[FN11] *Ackerman v. City of Creve Coeur*, 553 S.W.2d 490 (Mo. Ct. App. 1977).

[FN12] *Keay v. City of Coral Gables*, 236 So. 2d 133 (Fla. 3d DCA 1970).

[FN13] *Honn v. City of Coon Rapids*, 313 N.W.2d 409 (Minn. 1981).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 73

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
B. Statutes and Ordinances
5. Other Matters Regarding Statutes and Ordinances

[Topic Summary Correlation Table References](#)

§ 74. Proposed bills; legislation not yet in effect

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  122.1, 124.1

The courts will not entertain a declaratory judgment action to determine the effect of a statute in advance of its enactment[1] although a declaratory judgment statute should be liberally construed to permit the consideration of a statutory amendment before its effective date.[2] Thus, the fact that a statute has not yet taken effect is no bar to a declaratory judgment as to its validity so long as the requisites for declaratory judgment are present,[3] that is, where it is certain that the act will take effect and will substantially impair valuable property rights belonging to the plaintiff.[4]

When an agency has not yet promulgated rules or regulations to implement a certain statute, objections to the statute are premature and do not present a justiciable controversy ripe for declaratory adjudication.[5]

[FN1] *City of North Las Vegas v. Cluff*, 85 Nev. 200, 452 P.2d 461 (1969).

[FN2] *Maine Sugar Industries, Inc. v. Maine Indus. Bldg. Authority*, 264 A.2d 1 (Me. 1970).

[FN3] *Marshall House, Inc. v. Rent Control Bd. of Brookline*, 358 Mass. 686, 266 N.E.2d 876 (1971).

[FN4] *Hoagland v. Bibb*, 12 Ill. App. 2d 298, 139 N.E.2d 417 (3d Dist. 1957); *Department of Financial Institutions v. General Finance Corp.*, 227 Ind. 373, 86 N.E.2d 444, 10 A.L.R.2d 436 (1949); *State ex rel. Fatzer v. Shanahan*, 178 Kan. 400, 286 P.2d 742 (1955).

[FN5] *Developmental Pathways v. Ritter*, 178 P.3d 524 (Colo. 2008).

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
B. Statutes and Ordinances
5. Other Matters Regarding Statutes and Ordinances

[Topic Summary Correlation Table References](#)

§ 75. Legislation not yet enforced

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  [122.1](#), [124.1](#)

As a general rule, the courts will not pass upon the constitutionality of a legislative act where it does not appear that any attempt has been made to enforce the act.[1] In other words, courts will not render a declaratory judgment as to the validity of a statute or ordinance until a situation has arisen or is imminent which calls for its application or enforcement.[2] However, where an enactment has not been enforced against the plaintiff, the party initiating the action for declaratory judgment has a right to the determination of rights if that party pleads facts showing a protected interest which clearly falls within the ambit of the enactment and that the party's rights will be adversely affected by its enforcement.[3] A party bringing a preenforcement challenge under a declaratory judgment act must present a concrete factual situation[4] and is entitled to relief in such a case if such party can demonstrate that the ordinance is invalid and that the party will sustain or is in immediate danger of sustaining an injury as a result of the enforcement of the enactment.[5] When a plaintiff seeks declaratory judgment in a preenforcement review of a statute, ripeness concerns dictate that: (1) the parties have sufficiently adverse legal interests; (2) the facts are sufficiently concrete to allow for a conclusive legal judgment; and (3) the judgment renders practical help to the parties.[6] Thus, among other things, the plaintiff must show that it is seriously interested in violating the law in question and that the defendant is seriously intent on enforcing it.[7]

[FN1] *Poe v. Ullman*, 367 U.S. 497, 81 S. Ct. 1752, 6 L. Ed. 2d 989 (1961); *Choice Inc. of Texas v. Greenstein*, 691 F.3d 710 (5th Cir. 2012); *American Federation of Labor v. Reilly*, 113 Colo. 90, 155 P.2d 145, 160 A.L.R. 873 (1944); *Hammontree v. Hawley*, 40 Ohio L. Abs. 483, 57 N.E.2d 319 (Ct. App. 2d Dist. Franklin County 1943).

As to sufficiency of threatened enforcement to meet justiciability requirement for challenging criminal or penal statutes, see § 66.

[FN2] *Hammontree v. Hawley*, 40 Ohio L. Abs. 483, 57 N.E.2d 319 (Ct. App. 2d Dist. Franklin County 1943).

[FN3] *Eagle Books, Inc. v. City of Rockford*, 66 Ill. App. 3d 1038, 23 Ill. Dec. 699, 384 N.E.2d 493 (2d Dist. 1978).

[FN4] *State v. American Civil Liberties Union of Alaska*, 204 P.3d 364 (Alaska 2009).

[FN5] *Wills v. O'Grady*, 86 Ill. App. 3d 775, 42 Ill. Dec. 522, 409 N.E.2d 17 (1st Dist. 1980).

[FN6] *Goudy-Bachman v. U.S. Dept. of Health and Human Services*, 764 F. Supp. 2d 684 (M.D. Pa. 2011).

[FN7] *N.A.A.C.P., Western Region v. City of Richmond*, 743 F.2d 1346 (9th Cir. 1984) (regarding an action to challenge the validity of notice requirements for parade permits).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 75

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
B. Statutes and Ordinances
5. Other Matters Regarding Statutes and Ordinances

[Topic Summary Correlation Table References](#)

§ 76. Repealed statutes or ordinances; mootness

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  122.1, 124.1

When a law has been repealed, actions seeking declaratory relief with respect thereto are generally moot.[1] However, the question raised in a declaratory judgment suit does not become moot merely because an ordinance attacked by the plaintiff has ceased to exist. A question is not moot until it has become academic, and it is not academic so long as the threat to the plaintiff's interest which was represented by the ordinance has ceased to exist. So long as a plaintiff's rights are endangered by the legislative policy of a governmental entity, he or she is entitled to a judicial declaration of those rights regardless of whether there is presently in effect an ordinance implementing the policy[2] or where the litigants retain a stake in the controversy.[3]

[FN1] *Teague v. Cooper*, 720 F.3d 973 (8th Cir. 2013); *Tini Bikinis-Saginaw, LLC v. Saginaw Charter Tp.*, 836 F. Supp. 2d 504 (E.D. Mich. 2011); *Humane Society of United States v. State*, 2013 WL 4080775 (Mo. 2013).

[FN2] *Edge v. City of Moraine*, 58 Ohio Op. 2d 499, 283 N.E.2d 219 (C.P. 1970).

[FN3] *Ashness v. Tomasetti*, 643 A.2d 802 (R.I. 1994).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 76

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
C. Governmental Acts and Agencies

[Topic Summary Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 81, 121, 127, 201 to 217

West's Key Number Digest, [Federal Courts](#) 🔑 26

A.L.R. Library

A.L.R. Index, Declaratory Judgments

A.L.R. Index, Elections and Voting

A.L.R. Index, Uniform Declaratory Judgments Act

West's A.L.R. Digest, Declaratory Judgments 🔑 81, 121, 127, 201 to 217

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS III C REF

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
C. Governmental Acts and Agencies
1. In General
a. Administrative Actions

[Topic Summary Correlation Table References](#)

§ 77. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  81, 201

Forms

[Am. Jur. Pleading and Practice Forms, Declaratory Judgments § 34](#) (Complaint in federal court—To determine validity of federal agency regulation)

Declaratory judgment procedure is available to determine the powers and duties of various governmental agencies and officers,[1] recognizing that a well-known field of jurisdiction under the declaratory judgment law is the adjudication of legal rights in controversy between the citizen and public officials, including members of administrative agencies, in advance of threatened and erroneous action to the injury of the party plaintiff.[2] Statutory provisions providing for declaratory judgment expand the scope of available remedies and permit persons to seek a declaration of the constitutionality of a disputed government action.[3] However, declaratory judgment remedies are discretionary, and the courts traditionally have been reluctant to apply them to administrative determinations unless these arise in the context of a controversy ripe for judicial resolution.[4]

If the desired declaratory relief concerns the validity and construction of agency regulations, or if it concerns the constitutionality or interpretation of a statute upon which the administrative action is, or is to be, based, the action should be entertained.[5] Thus, the procedure for obtaining a declaratory judgment is available to determine the validity[6] and construction[7] of administrative regulations and resolutions or to secure a judicial determination of the meaning or constitutionality of the statute upon which the administrative action was based.[8] However, declaratory relief is not necessarily available to determine the validity of administrative decisions per se as, for example, the decision to deny a person a building permit[9] or where there is no prospective implementation in the manner complained of.[10]

Declaratory judgments are available to settle disputes between public officers and agencies,[11] as well as to determine questions arising in connection with elections[12] or arising out of disputes involving schools or school boards.[13]

An action for a declaratory judgment may not be an appropriate method for determining the meaning of an administrative order^[14] or for declaring the correctness and binding effect of an award.^[15]

The courts may use their discretion to decline to render declaratory relief, such as where the subject agency's challenged practice is undergoing significant modification and sound discretion weighs in favor of withholding the remedy of a declaratory judgment.^[16]

Observation:

State declaratory judgment statutes may make no provision for suits against the State, such actions being barred by sovereign immunity.^[17] However, because qualified immunity is only a defense to personal liability for monetary awards resulting from government officials performing discretionary functions, it may not be effectively asserted as a defense to a claim for declaratory or injunctive relief.^[18]

[FN1] *Lexin v. Superior Court*, 47 Cal. 4th 1050, 103 Cal. Rptr. 3d 767, 222 P.3d 214 (2010), as modified, (Apr. 22, 2010); *Department of Transp. v. Peach Hill Properties, Inc.*, 280 Ga. 624, 631 S.E.2d 660 (2006); *Cowan v. Board of Com'rs of Fremont County*, 143 Idaho 501, 148 P.3d 1247 (2006); *Consolidated Cigar Corp. v. Department of Public Health*, 372 Mass. 844, 364 N.E.2d 1202 (1977).

[FN2] *Avery Freight Lines v. White*, 245 Ala. 618, 18 So. 2d 394, 154 A.L.R. 732 (1944).

[FN3] *Deveraux v. City of Chicago*, 14 F.3d 328 (7th Cir. 1994).

[FN4] *Association of American Medical Colleges v. U.S.*, 217 F.3d 770 (9th Cir. 2000).

As to justiciability in declaratory actions, generally, see §§ 21 to 35.

As to the requirement of justiciability in order to render a declaratory judgment regarding government acts, see §§ 83 to 87.

[FN5] *Campbell County School Dist. v. Catchpole*, 6 P.3d 1275, 146 Ed. Law Rep. 912 (Wyo. 2000).

[FN6] *Ramspeck v. Federal Trial Examiners Conference*, 345 U.S. 128, 73 S. Ct. 570, 97 L. Ed. 872 (1953); *Los Angeles Haven Hospice, Inc. v. Sebelius*, 638 F.3d 644 (9th Cir. 2011); *Farm-to-Consumer Legal Defense Fund v. Sebelius*, 734 F. Supp. 2d 668 (N.D. Iowa 2010); *Greenlawn Trailer Sales Co. v. Board of Building Standards*, 51 Ohio App. 2d 161, 5 Ohio Op. 3d 314, 367 N.E.2d 887 (10th Dist. Franklin County 1976).

[FN7] *McInerney v. Ervin*, 46 So. 2d 458 (Fla. 1950).

[FN8] *Goedert ex rel. Wolfe v. State ex rel. Wyoming Workers' Safety and Compensation Div.*, 991 P.2d 1225 (Wyo. 1999).

[FN9] *Selby Realty Co. v. City of San Buenaventura*, 10 Cal. 3d 110, 109 Cal. Rptr. 799, 514 P.2d 111 (1973).

[FN10] *Wallace v. Burleson*, 361 So. 2d 554 (Ala. 1978) (controversy was not justiciable; county board

was seeking an advisory opinion regarding its status, and the state board had not taken any action in derogation of the county board's responsibility).

[FN11] § 91.

[FN12] §§ 92 to 95.

[FN13] §§ 96, 97.

[FN14] *Alamo Exp., Inc. v. Union City Transfer*, 158 Tex. 234, 309 S.W.2d 815 (1958) (railroad commission).

[FN15] *New Orleans Public Belt R. R. Com'n v. Ward*, 182 F.2d 654 (5th Cir. 1950) (award of National Railroad Adjustment Board against defendant carrier).

[FN16] *A. L. Mechling Barge Lines, Inc. v. U.S.*, 368 U.S. 324, 82 S. Ct. 337, 7 L. Ed. 2d 317 (1961).

[FN17] *Wisconsin Fertilizer Ass'n v. Karns*, 39 Wis. 2d 95, 158 N.W.2d 294 (1968).

As to effect of sovereign immunity on appropriate parties to declaratory judgment proceedings, see § 215.

[FN18] *Allen v. Coughlin*, 64 F.3d 77 (2d Cir. 1995); *Ratliff v. DeKalb County, Ga.*, 62 F.3d 338 (11th Cir. 1995).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 77

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
C. Governmental Acts and Agencies
1. In General
a. Administrative Actions

[Topic Summary Correlation Table References](#)

§ 78. Distinguishing administrative rules and actions

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  81, 201

The proper procedure for challenging an administrative rule is through a declaratory judgment action in which the administrative agency is joined as a party.[1] While in some jurisdictions the validity of an administrative rule may not be a proper subject for declaratory relief,[2] generally, the validity of a rule is subject to review under declaratory judgment statutes[3] while the validity of an adjudication is not.[4] In some jurisdictions, declaratory relief may be available to challenge the legality of an administrative action even though the action concerns neither adjudication nor rule making.[5]

In differentiating between rules and adjudications, an agency statement of policy or interpretation of future law which acts on unnamed and unspecified persons or facts is a rule, but an agency decision which acts on a specific set of accrued facts and affects only them is an adjudication.[6] That is to say, a declaratory judgment statute may be intended to apply only to rules issued by an agency in its quasi-legislative function and not to rulings issued in a quasi-judicial function.[7] Particular distinctions may be made on the facts in the case and the language of the particular declaratory judgment statute.[8] A crucial test in distinguishing legislative from administrative acts, for purposes of review, is whether the action taken, resolution or ordinance, makes new law or executes one already in existence.[9]

Particular declaratory judgment statutes may further limit the rules to which they are applicable;[10] thus, for example, a telephone company tariff schedule was not considered a "rule or regulation" to which a state declaratory judgment act was applicable where the statutes provided a special remedy to challenge such tariffs.[11]

[FN1] *Suburban Realty, Inc. v. Albin*, 131 N.H. 689, 559 A.2d 1332 (1989).

[FN2] *Lance Dodd, Inc. v. State*, 32 Or. App. 101, 573 P.2d 744 (1978).

[FN3] *Georgia Dept. of Medical Assistance v. Beverly Enterprises, Inc.*, 261 Ga. 59, 401 S.E.2d 499 (1991); *Coon v. City and County of Honolulu*, 98 Haw. 233, 47 P.3d 348 (2002); *Asmussen v. Commissioner, New Hampshire Dept. of Safety*, 145 N.H. 578, 766 A.2d 678 (2000); *BHP Petroleum Co., Inc. v. State, Wyoming Tax Com'n*, 766 P.2d 1162 (Wyo. 1989).

[FN4] *Roeber v. State, Dept. of Institutions*, 243 Mont. 437, 795 P.2d 424 (1990); *Bailey v. Council of Division of Planning and Development of Dept. of Conservation and Economic Development*, 22 N.J. 366, 126 A.2d 189 (1956); *Texas County Irr. and Water Resources Ass'n v. Oklahoma Water Resources Bd.*, 1990 OK 121, 803 P.2d 1119 (Okla. 1990).

[FN5] *Villages Development Co., Inc. v. Secretary of Executive Office of Environmental Affairs*, 410 Mass. 100, 571 N.E.2d 361 (1991).

[FN6] *Missourians for Separation of Church and State v. Robertson*, 592 S.W.2d 825 (Mo. Ct. App. W.D. 1979).

[FN7] *Boone v. Division of Family Services, State Dept. of Health and Rehabilitative Services*, 297 So. 2d 594 (Fla. 1st DCA 1974); *Amazon Cooperating Tenants v. State Bd. of Higher Educ.*, 15 Or. App. 418, 516 P.2d 89 (1973).

[FN8] *Georgia Dept. of Medical Assistance v. Beverly Enterprises, Inc.*, 261 Ga. 59, 401 S.E.2d 499 (1991) (manual containing terms and conditions was not a rule; thus, the manual could not be reviewed in a declaratory judgment).

[FN9] *McCallen v. City of Memphis*, 786 S.W.2d 633 (Tenn. 1990).

[FN10] *Irvin v. Woodliff*, 125 Ga. App. 214, 186 S.E.2d 792 (1971); *Chesapeake & Potomac Telephone Co. of Maryland v. Pincoffs*, 23 Md. App. 474, 328 A.2d 78 (1974).

[FN11] *Chesapeake & Potomac Telephone Co. of Maryland v. Pincoffs*, 23 Md. App. 474, 328 A.2d 78 (1974).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 78

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
C. Governmental Acts and Agencies
1. In General
b. Exhaustion of Means to Obtain Review of Administrative Decision

[Topic Summary Correlation Table References](#)

§ 79. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  81, 201

As a rule, the courts will not assume jurisdiction of declaratory judgment proceedings until administrative remedies have been exhausted^[1] except where the administrative remedy is not adequate.^[2]

Observation:

Declaratory judgments concerning the constitutionality of government conduct will almost always be inappropriate when the constitutional issues are freighted with uncertainty, and the underlying grievance can be remedied for the time being without a gratuitous exploration of uncharted constitutional terrain.^[3]

[FN1] *Public Utilities Commission of State of Cal. v. U.S.*, 355 U.S. 534, 78 S. Ct. 446, 2 L. Ed. 2d 470 (1958); *Talley v. City of North Little Rock*, 2009 Ark. 601, 381 S.W.3d 753 (2009); *Beahringer v. Page*, 204 Ill. 2d 363, 273 Ill. Dec. 784, 789 N.E.2d 1216 (2003); *School Committee of Hudson v. Board of Educ.*, 448 Mass. 565, 863 N.E.2d 22, 217 Ed. Law Rep. 697 (2007); *Mountain Water Co. v. Montana Dept. of Public Service Regulation*, 2005 MT 84, 326 Mont. 416, 110 P.3d 20 (2005).

[FN2] *Department of Professional Regulation v. Hall*, 398 So. 2d 978 (Fla. 1st DCA 1981); *Drummond v. State, Dept. of Revenue*, 378 S.C. 362, 662 S.E.2d 587 (2008).

[FN3] *El Dia, Inc. v. Hernandez Colon*, 963 F.2d 488 (1st Cir. 1992).

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
C. Governmental Acts and Agencies
1. In General
b. Exhaustion of Means to Obtain Review of Administrative Decision

[Topic Summary Correlation Table References](#)

§ 80. Effect of availability of review

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  81, 201

Declaratory judgments generally may not be used as a substitute for the review of decisions of boards or administrative officials exercising judicial or quasi-judicial powers.[1] A determination by an administrative agency which is essentially judicial in nature is appealable and may not be subject to review in an action for a declaratory judgment[2] although an agency's rule-making or quasi-legislative functions may be tested in a declaratory judgment action.[3]

Where there is no statutory provision for reviewing the action of an administrative board, declaratory relief is available for this purpose,[4] but if an appeal from the action of an administrative body is provided by statute, remedy by declaratory judgment will be denied.[5] A hearing in which there is no sworn testimony, no witnesses, no examination or cross-examination, no transcript, and no order containing findings and conclusions at the hearing is not quasi-judicial in nature and thus will not necessitate the seeking of review so that an action for declaratory relief may be considered.[6]

Where an appeal is precluded by rule, a party may be entitled to a declaratory judgment.[7] Declaratory relief may be available where, under the circumstances of the case, the administrative appeal would be to the official whose actions were being challenged.[8]

[FN1] *City of Miami v. Eldredge*, 126 So. 2d 169 (Fla. 3d DCA 1961).

[FN2] *Johnson v. Yeilding*, 267 Ala. 108, 100 So. 2d 29 (1958); *Bailey v. Council of Division of Planning and Development of Dept. of Conservation and Economic Development*, 22 N.J. 366, 126 A.2d 189 (1956).

[FN3] §§ 77, 78.

[FN4] *Kendall v. Beiling*, 295 Ky. 782, 175 S.W.2d 489 (1943) (seeking review of board of health's revocation of optometrist's license).

[FN5] *Board of Com'rs of Anne Arundel County v. Buch*, 190 Md. 394, 58 A.2d 672, 5 A.L.R.2d 569 (1948).

[FN6] *Connor v. Town of Palm Beach*, 398 So. 2d 952 (Fla. 4th DCA 1981).

[FN7] *Department of Transp. v. Morehouse*, 350 So. 2d 529 (Fla. 3d DCA 1977).

[FN8] *Wisconsin Fertilizer Ass'n v. Karns*, 39 Wis. 2d 95, 158 N.W.2d 294 (1968).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 80

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
C. Governmental Acts and Agencies
1. In General
b. Exhaustion of Means to Obtain Review of Administrative Decision

[Topic Summary Correlation Table References](#)

§ 81. Constitutional questions

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  [81](#), [121](#), [201](#)

Since administrative agencies have no power to determine the constitutionality of statutes, there is no reason for forcing plaintiffs through administrative process where in good faith they are advancing a substantial complaint that the statute they were charged with violating in an administrative action brought against them is unconstitutional.[1] Thus, declaratory judgment proceedings may be employed to determine the constitutionality of statutes upon which an administrative agency relies for its authority.[2] In an action challenging the jurisdiction of an administrative agency and the constitutionality of the statute on which the administrative action was based, the plaintiff may not be required to exhaust administrative remedies before pursuing such action where the questions involved are purely legal so that administrative expertise would be of no real value.[3] The subject of mismanagement is not justiciable and does not provide a basis for declaring a duly enacted statute unconstitutional.[4]

Observation:

An administrative procedure act cannot relegate matters of constitutional proportions to administrative agency resolution, nor can it impair judicial jurisdiction to determine constitutional disputes, and thus, such disputes may sometimes be the subject of a declaratory judgment notwithstanding the failure to exhaust administrative remedies.[5] However, with regard to constitutionality, the declaratory judgment remedy may be limited to the review of those agency errors that are egregious or so devastating that the promised administrative remedy is too little or too late[6] although a determination on the merits of a question regarding the constitutionality of a government action may not be forestalled by dismissing it as nonjusticiable for reasons of alleged triviality or purposeless judicial meddling in the executive and legislative process.[7]

[FN1] *Texas State Bd. of Pharmacy v. Walgreen Texas Co.*, 520 S.W.2d 845 (Tex. Civ. App. Austin 1975), writ refused n.r.e., (July 7, 1975).

[FN2] Clayton v. Bennett, 5 Utah 2d 152, 298 P.2d 531 (1956).

[FN3] Levitt & Sons, Inc. v. Division Against Discrimination in State Dept. of Ed., 31 N.J. 514, 158 A.2d 177 (1960).

[FN4] Town of North Hempstead v. Incorporated Village of Westbury, 182 A.D.2d 272, 588 N.Y.S.2d 293 (2d Dep't 1992), on reargument, 208 A.D.2d 614, 618 N.Y.S.2d 226 (2d Dep't 1994).

[FN5] Department of Transp. v. Morehouse, 350 So. 2d 529 (Fla. 3d DCA 1977).

[FN6] School Bd. of Leon County v. Mitchell, 346 So. 2d 562 (Fla. 1st DCA 1977).

[FN7] New York State Bankers Ass'n, Inc. v. Wetzler, 81 N.Y.2d 98, 595 N.Y.S.2d 936, 612 N.E.2d 294 (1993).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 81

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
C. Governmental Acts and Agencies
1. In General
b. Exhaustion of Means to Obtain Review of Administrative Decision

[Topic Summary Correlation Table References](#)

§ 82. Actions allowed by provisions governing administrative procedure

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  81, 201

Under federal provisions governing administrative procedures, judicial review of federal agency action may be undertaken by any applicable form of legal action, including an action for declaratory judgment.[1] Consequently, since the statutory provisions governing the United States Board of Parole do not contain any special statutory review proceeding, administrative proceedings of the United States Board of Parole can be judicially reviewed in an action for a declaratory judgment.[2] The declaratory judgment remedy may not, however, be used to avoid exhausting administrative remedies.[3] A declaratory judgment proceeding merely provides procedural and remedial flexibility to the federal courts where the court has independent grounds for jurisdiction over an action challenging federal agency policies.[4]

[FN1] 5 U.S.C.A. § 703.

[FN2] *Hurley v. Reed*, 288 F.2d 844 (D.C. Cir. 1961); *Robbins v. Reed*, 269 F.2d 242 (D.C. Cir. 1959).

[FN3] *Cadillac Pub. Co. v. Summerfield*, 227 F.2d 29 (D.C. Cir. 1955); *Indiana Hosp. Ass'n, Inc. v. Schweiker*, 544 F. Supp. 1167 (S.D. Ind. 1982), judgment aff'd, 714 F.2d 872 (7th Cir. 1983).

[FN4] *Consortium of Community Based Organizations v. Donovan*, 530 F. Supp. 520 (E.D. Cal. 1982) (challenging policy for distribution of federal job funds).

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
C. Governmental Acts and Agencies
1. In General
c. Controversy and Interest Necessary to Maintain Action

[Topic Summary Correlation Table References](#)

§ 83. Justiciability, generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  81, 201

To secure declaratory relief in a case involving administrative action, the plaintiff must show that there is an actual controversy^[1] as to the rights and status of parties actually before the court for adjudication, and the declaration sought must actually resolve the controversy.^[2] Declaratory judgments determining the powers of administrative agencies and public officials or the appropriateness of their actions will be denied where no actual controversy exists.^[3]

For the purpose of a motion for declaratory judgment, in the context of a dispute between an administrative agency and a party, there is no actual controversy in the absence of final agency action.^[4] Also, a failure to bring the action against an appropriate party does not present a justiciable case.^[5]

Observation:

Declaratory judgments concerning the constitutionality of government conduct will almost always be inappropriate when the constitutional issues are freighted with uncertainty, and the underlying grievance can be remedied for the time being without a gratuitous exploration of uncharted constitutional terrain.^[6]

[FN1] *Villages Development Co., Inc. v. Secretary of Executive Office of Environmental Affairs*, 410 Mass. 100, 571 N.E.2d 361 (1991); *Texas Dept. of Public Safety v. Salazar*, 304 S.W.3d 896 (Tex. App. Austin 2009).

As to justiciability in declaratory actions, generally, see §§ 21 to 35.

[FN2] *Texas Dept. of Public Safety v. Salazar*, 304 S.W.3d 896 (Tex. App. Austin 2009).

[FN3] *Burger Brewing Co. v. Liquor Control Commission, Dept. of Liquor Control*, 34 Ohio St. 2d 93,

63 Ohio Op. 2d 149, 296 N.E.2d 261 (1973); *Greenlawn Trailer Sales Co. v. Board of Building Standards*, 51 Ohio App. 2d 161, 5 Ohio Op. 3d 314, 367 N.E.2d 887 (10th Dist. Franklin County 1976); *State ex rel. La Follette v. Dammann*, 220 Wis. 17, 264 N.W. 627, 103 A.L.R. 1089 (1936).

[FN4] *Town of Hingham v. Department of Housing and Community Development*, 451 Mass. 501, 887 N.E.2d 231 (2008).

[FN5] *Normandy Pointe Associates v. Federal Emergency Management Agency*, 105 F. Supp. 2d 822 (S.D. Ohio 2000).

[FN6] *El Dia, Inc. v. Hernandez Colon*, 963 F.2d 488 (1st Cir. 1992).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 83

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
C. Governmental Acts and Agencies
1. In General
c. Controversy and Interest Necessary to Maintain Action

[Topic Summary Correlation Table References](#)

§ 84. Ripeness

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  81, 201

Declaratory judgment remedies are discretionary, and the courts traditionally have been reluctant to apply them to administrative determinations unless these arise in the context of a controversy ripe for judicial resolution, that is to say, unless the effects of the administrative action challenged have been felt in a concrete way by the challenging parties; however, in some cases, the promulgation of a regulation will itself affect the parties concretely enough to satisfy this requirement, but that will not be so in every case.[1] Questions of ripeness that arise when governmental actions are challenged in a declaratory judgment context are gauged by means of a two-part test: whether the issue presented is fit for review and the extent to which hardship looms.[2]

Observation:

The doctrine of ripeness serves to prevent courts, through the avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies and also to protect agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.[3]

[FN1] *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43, 113 S. Ct. 2485, 125 L. Ed. 2d 38 (1993).

[FN2] *Ernst & Young v. Depositors Economic Protection Corp.*, 45 F.3d 530 (1st Cir. 1995).

[FN3] *Aulenback, Inc. v. Federal Highway Admin.*, 103 F.3d 156 (D.C. Cir. 1997).

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
C. Governmental Acts and Agencies
1. In General
c. Controversy and Interest Necessary to Maintain Action

[Topic Summary Correlation Table References](#)

§ 85. Mootness

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  81, 201

A declaratory judgment will provide effective relief, and such an action is not moot when the challenged government activity is not contingent, has not evaporated or disappeared, and, by its continuing and brooding presence, casts what may well be a substantial adverse effect on the interests of the petitioner.[1] A change in factual circumstances underlying an action for declaratory judgment may render the request for declaratory relief moot.[2] However, even if the plaintiff's specific claim has been mooted, the plaintiff may nevertheless seek declaratory relief forbidding an agency from imposing the disputed policy in the future[3] as long as the plaintiff has standing to bring such a forward-looking challenge.[4] The question of mootness may depend on the particular facts of the case and the relative positions of the parties,[5] and a matter that presents an ongoing dispute of public importance is not moot.[6]

[FN1] *Shoshone-Bannock Tribes v. Fish & Game Com'n, Idaho*, 42 F.3d 1278 (9th Cir. 1994).

[FN2] *Kensu v. Haigh*, 87 F.3d 172, 1996 FED App. 0174P (6th Cir. 1996) (prisoner was no longer confined in the institution against which declaratory relief was sought); *Headwaters, Inc. v. Bureau of Land Management, Medford Dist.*, 893 F.2d 1012 (9th Cir. 1989); *Howkins v. Walsh Jesuit High School*, 2013-Ohio-917, 2013 WL 989376 (Ohio Ct. App. 9th Dist. Summit County 2013), appeal not allowed, 136 Ohio St. 3d 1451, 2013-Ohio-3210, 991 N.E.2d 258 (2013).

[FN3] *Arkansas Medical Soc., Inc. v. Reynolds*, 6 F.3d 519 (8th Cir. 1993); *Norman-Bloodsaw v. Lawrence Berkeley Laboratory*, 135 F.3d 1260, 123 Ed. Law Rep. 1116 (9th Cir. 1998); *City of Houston, Tex. v. Department of Housing and Urban Development*, 24 F.3d 1421 (D.C. Cir. 1994).

[FN4] *City of Houston, Tex. v. Department of Housing and Urban Development*, 24 F.3d 1421 (D.C. Cir. 1994).

[FN5] [Emery Worldwide Airlines, Inc. v. U.S.](#), 47 Fed. Cl. 461 (2000).

[FN6] [Wyoming Coalition v. Wyoming Game & Fish Com'n](#), 875 P.2d 729 (Wyo. 1994).

Named plaintiffs' claims, in an action against the District of Columbia alleging that individuals with disabilities who were covered by Medicaid were being unnecessarily institutionalized in nursing facilities and isolated from their communities in violation of Title II of the Americans with Disabilities Act and the Rehabilitation Act, were not rendered moot, despite fact that they had moved out of nursing facilities and were receiving care in the least restrictive setting appropriate to their needs, where plaintiffs were seeking declaratory relief as to an ongoing policy, and the class as a whole retained a continuing live claim notwithstanding changes to the named plaintiffs' interests. [Thorpe v. District of Columbia](#), 916 F. Supp. 2d 65 (D.D.C. 2013).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 85

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
C. Governmental Acts and Agencies
1. In General
c. Controversy and Interest Necessary to Maintain Action

[Topic Summary Correlation Table References](#)

§ 86. Interest required; standing

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  81, 201

The lack of standing in an action brought to challenge a government action or regulation will render a declaratory judgment unavailable.[1] To entitle plaintiff to declaratory relief, the plaintiff's interest must be substantial[2] and not a mere general economic interest jeopardized by the opinion of an administrative board where there has been no effort to apply the opinion to the plaintiff's particular case.[3] An actual or imminently threatened injury may be sufficient.[4]

One injured by competition authorized by a state instrumentality has no standing to maintain a suit for declaratory relief against such state instrumentality.[5]

A declaratory action against a public agency can be maintained only where the agency is a party whose interest will be affected by the decree. Thus, an association of liquor dealers could not maintain an action against a county to determine whether liquor establishments would have to be closed on a certain day since the county is not charged with enforcement of the law.[6]

[FN1] *Fox v. Palmas Del Mar Properties, Inc.*, 620 F. Supp. 2d 250 (D.P.R. 2009); *School Committee of Hudson v. Board of Educ.*, 448 Mass. 565, 863 N.E.2d 22, 217 Ed. Law Rep. 697 (2007) (plaintiff must show that it has standing); *Schulz v. New York State Executive*, 92 N.Y.2d 1, 677 N.Y.S.2d 1, 699 N.E.2d 360 (1998).

[FN2] *Avery Freight Lines v. White*, 245 Ala. 618, 18 So. 2d 394, 154 A.L.R. 732 (1944); *Taylor v. Tinsley*, 138 Colo. 182, 330 P.2d 954 (1958).

[FN3] *Brown v. Lawrence*, 204 Ga. 788, 51 S.E.2d 651 (1949) (overruled in part on other grounds by, *Calvary Independent Baptist Church v. City of Rome*, 208 Ga. 312, 66 S.E.2d 726 (1951)).

[FN4] *Wieland v. City of Arnold*, 100 F. Supp. 2d 984 (E.D. Mo. 2000) (civil rights action).

[FN5] *Nantucket Boat Inc. v. Woods Hole, Martha's Vineyard and Nantucket S.S. Authority*, 345 Mass. 551, 188 N.E.2d 476 (1963) (action against authority which allegedly intended to license vessel to unlawfully compete with plaintiff's vessels).

[FN6] *Retail Liquor Dealers Ass'n of Dade County v. Dade County*, 100 So. 2d 76 (Fla. 3d DCA 1958).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 86

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
C. Governmental Acts and Agencies
1. In General
c. Controversy and Interest Necessary to Maintain Action

[Topic Summary Correlation Table References](#)

§ 87. Interest required; standing—Where regulation has not yet been enforced

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 81, 201

For a real controversy to exist, it is not necessary that plaintiffs violate a regulation so long as there is a controversy between parties with adverse legal interests of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.[1] A declaratory judgment may be sought to obtain prospective relief from the enforcement of an administrative regulation,[2] and statutes in some jurisdictions so provide.[3] Individuals threatened with a taking may be allowed to seek the declaration of the constitutionality of the disputed governmental action before potentially uncompensable damages are sustained.[4]

However, the fact that a person is in such a position that a regulation may be enforced against that person does not necessarily entitle the person to declaratory relief.[5] Even the fact that a regulation has been enforced against similarly situated plaintiffs in the past does not necessarily create a real controversy unless the plaintiffs can demonstrate a likelihood of its being enforced against them.[6]

[FN1] [Burger Brewing Co. v. Liquor Control Commission](#), Dept. of Liquor Control, 34 Ohio St. 2d 93, 63 Ohio Op. 2d 149, 296 N.E.2d 261 (1973).

[FN2] [Stop & Shop Companies, Inc. v. Board of Registration in Pharmacy](#), 15 Mass. App. Ct. 1005, 448 N.E.2d 773 (1983); [Rankin-Thoman, Inc. v. Caldwell](#), 42 Ohio St. 2d 436, 71 Ohio Op. 2d 411, 329 N.E.2d 686 (1975); [Bayada Nurses, Inc. v. Com., Dept. of Labor and Industry](#), 607 Pa. 527, 8 A.3d 866 (2010).

[FN3] [Broen Memorial Home v. Minnesota Dept. of Human Services](#), 364 N.W.2d 436 (Minn. Ct. App. 1985).

[FN4] [Eastern Enterprises v. Apfel](#), 524 U.S. 498, 118 S. Ct. 2131, 141 L. Ed. 2d 451 (1998).

[FN5] *Keesey v. Leahy*, 441 F. Supp. 48 (N.D. Ill. 1977).

[FN6] *Olitsky v. O'Malley*, 597 F.2d 295 (1st Cir. 1979).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 87

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
C. Governmental Acts and Agencies
2. Matters Regarding Particular Officials, Agencies, and Government Bodies

[Topic Summary Correlation Table References](#)

§ 88. Federal officers or agencies

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 81, 201, 203

One who has exhausted available administrative remedies may bring a declaratory judgment action to determine whether a federal government administrator or agency has acted in excess of its powers.[1] This rule may be applied where:

- a loyalty board allegedly exceeds its powers in ordering a government employee's dismissal[2]
- a cabinet official discharges an employee under an allegedly invalid application of the statutory provisions for summary suspensions[3]
- the Secretary of the Army discharges petitioners in a form other than honorable, such discharge being based on preinduction activities[4]
- it is alleged that the petitioner has lost a job in private industry as a result of the government's unauthorized action in revoking petitioner's security clearance[5]

Observation:

The availability of declaratory relief against particular officers may depend on the authorization of applicable statutes.[6]

[FN1] *McGrath v. Kristensen*, 340 U.S. 162, 71 S. Ct. 224, 95 L. Ed. 173 (1950).

[FN2] *Peters v. Hobby*, 349 U.S. 331, 75 S. Ct. 790, 99 L. Ed. 1129 (1955).

[FN3] *Cole v. Young*, 351 U.S. 536, 76 S. Ct. 861, 100 L. Ed. 1396 (1956).

[FN4] *Harmon v. Brucker*, 355 U.S. 579, 78 S. Ct. 433, 2 L. Ed. 2d 503 (1958).

[FN5] [Greene v. McElroy](#), 360 U.S. 474, 79 S. Ct. 1400, 3 L. Ed. 2d 1377 (1959).

[FN6] [Fletcher v. U.S.](#), 116 F.3d 1315 (10th Cir. 1997) (declaratory relief against Indian tribe officers not available pursuant to equal protection provisions in civil rights statutes applicable to Indians).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 88

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
C. Governmental Acts and Agencies
2. Matters Regarding Particular Officials, Agencies, and Government Bodies

[Topic Summary Correlation Table References](#)

§ 89. State officials and agencies

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  81, 201, 204, 206

So long as the requirements of justiciability are satisfied,[1] declaratory judgments may be obtained to determine the powers of state officials and agencies and the validity of their actions;[2] thus, an action is maintainable to determine whether a corporation is subject to the jurisdiction of a public service commission,[3] to determine if the public is entitled to declaratory relief for the breach of an open meetings provision of a contract between the city and a festival promoter,[4] to determine the validity of an order issued by a state labor board,[5]] to determine the extent of the supervisory powers of a superintendent of insurance,[6] to determine the validity of the firing of a state employee after he asked to run for political office,[7] and to determine the validity of a statute under which the license director could require a small loan company to register.[8]

On the other hand, a declaratory judgment action is not the proper procedural avenue to seek relief on a claim that an agency acted on the basis of no evidence or improper evidence.[9]

Caution:

Particular provisions of governing law may limit declaratory judgments challenging the validity of an administrative rule or threatened application of such a rule[10] or may prescribe available, exclusive remedies and thus preclude jurisdiction to render a declaratory judgment in specific matters.[11]

Under federal law, the district courts are prohibited from interfering, under specified circumstances, with any order affecting rates chargeable by a public utility and made by a state administrative agency or a ratemaking body of a state political subdivision.[12] The prohibition includes declaratory relief.[13]

[FN1] [Indiana Dept. of Environmental Management v. Twin Eagle LLC](#), 798 N.E.2d 839 (Ind. 2003); [Hansen v. State, Dept. of Social Services, Family Support Div.](#), 226 S.W.3d 137 (Mo. 2007) (plaintiff did not present issues ripe for determination).

[FN2] *Dennis v. Higgins*, 498 U.S. 439, 111 S. Ct. 865, 112 L. Ed. 2d 969 (1991); *Alabama Dept. of Environmental Management v. Coosa River Basin Initiative, Inc.*, 826 So. 2d 111 (Ala. 2002); *Entergy Nuclear Generation Co. v. Department of Environmental Protection*, 459 Mass. 319, 944 N.E.2d 1027 (2011).

As to declaratory judgment actions against tax commissioners and other officials concerned with assessment and collection of taxes, see § 99.

[FN3] *Inland Empire Rural Electrification v. Department of Public Service of Washington*, 199 Wash. 527, 92 P.2d 258 (1939).

[FN4] *State ex rel. Journal/Sentinel, Inc. v. Pleva*, 155 Wis. 2d 704, 456 N.W.2d 359 (1990).

[FN5] *Treasurer of City of Worcester v. Department of Labor and Industries*, 327 Mass. 237, 98 N.E.2d 270 (1951).

[FN6] *Old Reliable Atlas Life Soc. v. Leggett*, 364 Mo. 630, 265 S.W.2d 302 (1954).

[FN7] *Department of Transp. v. Morehouse*, 350 So. 2d 529 (Fla. 3d DCA 1977).

[FN8] *Acme Finance Co. v. Huse*, 192 Wash. 96, 73 P.2d 341, 114 A.L.R. 1345 (1937).

[FN9] *City of Graysville v. Glenn*, 46 So. 3d 925 (Ala. 2010).

[FN10] *Missouri Soybean Ass'n v. Missouri Clean Water Com'n*, 102 S.W.3d 10 (Mo. 2003).

[FN11] *Ko'olau Agr. Co., Ltd. v. Commission of Water Resource Management*, 83 Haw. 484, 927 P.2d 1367 (1996) (special form of remedy available as exclusive avenue for judicial review of Water Resource Management designation).

[FN12] 28 U.S.C.A. § 1342.

[FN13] *Tennyson v. Gas Service Co.*, 506 F.2d 1135, 28 A.L.R. Fed. 408 (10th Cir. 1974); *Edwards v. Transcontinental Gas Pipe Line Corp.*, 464 F. Supp. 654 (M.D. La. 1979).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 89

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
C. Governmental Acts and Agencies
2. Matters Regarding Particular Officials, Agencies, and Government Bodies

[Topic Summary Correlation Table References](#)

§ 90. Municipal or county bodies

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 81, 201, 209

Declaratory judgment actions may be available against municipal[1] or county[2] bodies or may be brought by such bodies.[3]

Declaratory judgment actions may be utilized to attack the validity of annexation[4] and disannexation[5] proceedings, as well as a variety of other actions by municipal or county bodies.[6] However, where a special statutory procedure like that provided for annexation is available, actions for declaratory judgment and injunction cannot be used to bypass the statutory procedure.[7]

Declaratory relief is available to determine the right of a city or county to sell property no longer needed for public purposes,[8] to determine the rights of municipal or county employees to compensation or certain fees,[9] to determine the rights of public employees under public pension and retirement plans,[10] and to determine the rights of a person prevented from opening a place of business by city officials claiming to act under authority of a zoning ordinance.[11] A declaratory judgment is also a proper way to challenge a coroner's findings[12] or to seek an order telling a police department how to keep, store, maintain, and make available public records.[13]

However, the wisdom of a general plan adopted by a city or county is within the legislative, rather than judicial, sphere, and therefore, a landowner may not maintain an action for declaratory relief to probe the merits of the plan, absent allegation of a defect in the proceedings leading to its enactment.[14] Also, particular factual bases for government bodies' decisions may not be a proper subject for a declaratory judgment,[15] and intervening amendments in local law may preclude an action for declaratory judgment as moot.[16] In addition, plaintiffs may be required to exhaust administrative remedies before being entitled to pursue a declaratory judgment against a city[17] or county body.[18]

[FN1] [Lexin v. Superior Court](#), 47 Cal. 4th 1050, 103 Cal. Rptr. 3d 767, 222 P.3d 214 (2010), as modified, (Apr. 22, 2010); [Board of Educ. of Town and Borough of Naugatuck v. Town and Borough of](#)

Naugatuck, 257 Conn. 409, 778 A.2d 862, 156 Ed. Law Rep. 1110 (2001); Cox v. City of Cheyenne, 2003 WY 146, 79 P.3d 500 (Wyo. 2003).

As to declaratory judgment actions challenging zoning ordinances, see §§ 69 to 73.

[FN2] Shevock v. Orchard Homeowners Ass'n, Inc., 621 A.2d 346 (Del. 1993); Cowan v. Board of Com'rs of Fremont County, 143 Idaho 501, 148 P.3d 1247 (2006); Milwaukee Dist. Council 48 v. Milwaukee County, 2001 WI 65, 244 Wis. 2d 333, 627 N.W.2d 866 (2001).

[FN3] Huntsville-Madison County Airport Authority v. The Huntsville Times, a Div. of The Birmingham News Co., 564 So. 2d 904 (Ala. 1990); City of Garland v. Dallas Morning News, 22 S.W.3d 351 (Tex. 2000).

[FN4] Town of Elmore v. Town of Coosada, 957 So. 2d 1096 (Ala. 2006); City of New Haven v. Reichhart, 748 N.E.2d 374 (Ind. 2001); Braunagel v. City of Devils Lake, 2001 ND 118, 629 N.W.2d 567 (N.D. 2001).

[FN5] Greer v. Lewiston Golf & Country Club, Inc., 81 Idaho 393, 342 P.2d 719 (1959).

[FN6] §§ 92 to 108.

[FN7] State ex rel. Smith v. Frost, 74 Ohio St. 3d 107, 1995-Ohio-265, 656 N.E.2d 673 (1995).

[FN8] E.C. Brown Co. v. Ontario County, 123 N.Y.S.2d 546 (Sup 1953), *aff'd*, 5 A.D.2d 760, 169 N.Y.S.2d 1020 (4th Dep't 1957); Babin v. City of Ashland, 160 Ohio St. 328, 52 Ohio Op. 212, 116 N.E.2d 580 (1953).

[FN9] Houston County v. Martin, 232 Ala. 511, 169 So. 13 (1936); *In re Breidenbach*, 214 Wis. 54, 252 N.W. 366 (1934).

[FN10] Hubbard v. Board of Trustees of Retirement System, 315 Mich. 18, 23 N.W.2d 186 (1946); *Jud v. City of San Antonio*, 143 Tex. 303, 184 S.W.2d 821 (1945).

[FN11] Glackman v. City of Miami Beach, 159 Fla. 376, 31 So. 2d 393 (1947).

[FN12] State ex rel. Blair v. Balraj, 69 Ohio St. 3d 310, 1994-Ohio-40, 631 N.E.2d 1044 (1994).

[FN13] State ex rel. Police Officers for Equal Rights v. Lashutka, 72 Ohio St. 3d 185, 1995-Ohio-19, 648 N.E.2d 808 (1995).

[FN14] Selby Realty Co. v. City of San Buenaventura, 10 Cal. 3d 110, 109 Cal. Rptr. 799, 514 P.2d 111 (1973).

[FN15] Skinner Enterprises, Inc. v. Lewis and Clark County Bd. of Health, 286 Mont. 256, 950 P.2d 733 (1997).

[FN16] Skinner Enterprises, Inc. v. Lewis and Clark City-County Health Dept., 1999 MT 106, 294 Mont. 310, 980 P.2d 1049 (1999).

[FN17] *Josephson v. City of Annapolis*, 353 Md. 667, 728 A.2d 690 (1998).

[FN18] *Wilczewski v. Commissioner of Dept. of Environmental Quality Engineering*, 404 Mass. 787, 537 N.E.2d 1204 (1989).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 90

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
C. Governmental Acts and Agencies
2. Matters Regarding Particular Officials, Agencies, and Government Bodies

[Topic Summary Correlation Table References](#)

§ 91. Disputes between public officers or administrative agencies

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 81, 201, 204, 205

Disputes between public officers or administrative agencies have been regarded as appropriate for declaratory relief under state statutes^[1] where an actual controversy exists^[2] and where the parties are authorized to sue or be sued.^[3]

A mere difference of opinion between public officers, not amounting to a justiciable controversy concerning adverse interests, is not sufficient as the basis for a declaratory judgment,^[4] nor will declaratory relief be granted where there is no real difference of opinion between public officers so that a declaratory judgment would in effect be merely an advisory opinion.^[5]

[FN1] *Town of Burnsville v. City of Bloomington*, 264 Minn. 133, 117 N.W.2d 746 (1962).

[FN2] *Board of Ed. of City of Syracuse v. King*, 280 A.D. 458, 114 N.Y.S.2d 329 (4th Dep't 1952); *County Bd. of Highway Com'rs v. Wilde*, 179 Tenn. 141, 163 S.W.2d 329 (1942); *Board of Ed. of Wyoming County v. Board of Public Works*, 144 W. Va. 593, 109 S.E.2d 552 (1959).

[FN3] *Personnel Bd. of Mobile County v. City of Mobile*, 264 Ala. 56, 84 So. 2d 365 (1955).

As to parties in actions for declaratory judgments, see §§ 203 to 215.

[FN4] *Moore v. Bolin*, 70 Ariz. 354, 220 P.2d 850 (1950); *Marshall v. Hill*, 47 Del. 478, 93 A.2d 524 (Super. Ct. 1952).

[FN5] *Board of Education for Unorganized Territory of St. Louis County v. Borgen*, 192 Minn. 512, 257 N.W. 92 (1934).

rights reserved.

AMJUR DECLJUDS § 91

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
C. Governmental Acts and Agencies
3. Election Matters

[Topic Summary Correlation Table References](#)

§ 92. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 81, 212

Declaratory judgments may be rendered to determine the validity of elections,[1] the term of office of an elective officer,[2] and the validity of statutory requirements as to the method of delivering absentee ballots to hospital patients.[3] However, declarations to determine the validity of elections may be denied on the ground that other statutory remedies and procedures are available,[4] such as quo warranto[5] and recounts,[6] or on the ground that the plaintiff has waived the right to challenge the election.[7] In addition, declaratory relief challenging the validity of election proceedings may be denied on the ground that there is no justiciable controversy,[8] or the action calls for an advisory opinion[9] or where the constitutionality of the law could have and should have been challenged before the election.[10] However, a challenge to state election law may be maintained after the election in which the plaintiff runs for office where the election law will affect future elections[11] or where issues are raised which are likely to recur.[12]

Declaratory judgment actions also may be appropriate to challenge the validity of statutes affecting voting and elections,[13] such as a state's statutory scheme for placing names of candidates on the general election ballot[14] or a provision defining the term "political committee" in a way which allegedly infringes the right of free speech.[15]

The federal courts have jurisdiction to entertain an action for declaratory relief against a state charged with depriving citizens of their voting rights in violation of statutory provisions protecting civil rights.[16] Thus, while a declaration as to the eligibility of certain individuals to be voters may be denied on the ground that the state election laws prescribe the qualifications for registration and voting and the method by which contested cases may be heard in court,[17] declaratory relief may be granted where it is claimed that the denial of the right to vote was based on racial discrimination.[18]

Declaratory judgments may be rendered with respect to political parties, for example, whether a certain political party was an established party entitled to participate in a primary election[19] or whether statutes governing the membership of a party's state committee were valid.[20] Declaratory relief may be available to determine whether state legislative apportionment statutes violate the Equal Protection Clause of the Federal Con-

stitution[21] and whether an absentee voters' law is valid.[22]

CUMULATIVE SUPPLEMENT

Cases:

Trial courts have the authority to enter a declaratory judgment finding that an initiative petition is facially unconstitutional. [City of Kansas City, Missouri v. Chastain](#), 420 S.W.3d 550 (Mo. 2014).

[END OF SUPPLEMENT]

[FN1] [Friends of Sierra Madre v. City of Sierra Madre](#), 25 Cal. 4th 165, 105 Cal. Rptr. 2d 214, 19 P.3d 567 (2001), as modified, (May 2, 2001); [Thompson v. Talmadge](#), 201 Ga. 867, 41 S.E.2d 883 (1947) (determining title to office of state governor); [City of Nevada v. Slemmons](#), 244 Iowa 1068, 59 N.W.2d 793, 43 A.L.R.2d 693 (1953) (determining whether one acting as successor to a resigned municipal councilman became a duly elected and qualified councilman by valid and proper procedure of the council); [Webb v. Clatsop County School Dist. No. 3](#), 188 Or. 324, 215 P.2d 368 (1950) (determining validity of special school election where it is alleged that election officials committed irregularities).

[FN2] [Wingate v. Flynn](#), 139 Misc. 779, 249 N.Y.S. 351 (Sup 1931), *aff'd*, 233 A.D. 785, 250 N.Y.S. 917 (3d Dep't 1931), *aff'd*, 256 N.Y. 690, 177 N.E. 195 (1931).

[FN3] [Luse v. Wray](#), 254 N.W.2d 324 (Iowa 1977).

[FN4] [Harvey v. City of Oneonta](#), 715 So. 2d 779 (Ala. 1998); [Holtzendorf v. Glynn County](#), 79 Ga. App. 44, 52 S.E.2d 671 (1949).

[FN5] [Scully v. Town of Westport](#), 145 Conn. 648, 145 A.2d 742 (1958); [Finlayson v. West Bloomfield Tp.](#), 320 Mich. 350, 31 N.W.2d 80 (1948).

[FN6] [Cox v. Howard](#), 261 S.W.2d 673 (Ky. 1953).

[FN7] [State ex rel. Chilcutt v. Thatcher](#), 359 Mo. 122, 221 S.W.2d 172 (1949).

[FN8] [Lanahan v. City of Los Angeles](#), 14 Cal. 2d 128, 92 P.2d 1014 (1939); [Cranston v. Thomson](#), 530 P.2d 726 (Wyo. 1975).

[FN9] [Wisconsin Right to Life, Inc. v. Paradise](#), 138 F.3d 1183 (7th Cir. 1998).

[FN10] [Hendon v. North Carolina State Bd. of Elections](#), 710 F.2d 177 (4th Cir. 1983).

[FN11] [New Hampshire Right to Life Political Action Committee v. Gardner](#), 99 F.3d 8 (1st Cir. 1996); [Buckley v. Illinois Judicial Inquiry Bd.](#), 997 F.2d 224 (7th Cir. 1993); [Allen v. Bennett](#), 823 So. 2d 679 (Ala. 2001).

[FN12] [Libertarian Party of New Hampshire v. Gardner](#), 638 F.3d 6 (1st Cir. 2011), *cert. denied*, 132 S. Ct. 402, 181 L. Ed. 2d 258 (2011); [Clark v. Burleigh](#), 4 Cal. 4th 474, 14 Cal. Rptr. 2d 455, 841 P.2d 975

(1992).

[FN13] *Friends of Sierra Madre v. City of Sierra Madre*, 25 Cal. 4th 165, 105 Cal. Rptr. 2d 214, 19 P.3d 567 (2001), as modified, (May 2, 2001); *Perschall v. State*, 697 So. 2d 240 (La. 1997).

[FN14] *Libertarian Party of New Hampshire v. Gardner*, 638 F.3d 6 (1st Cir. 2011), cert. denied, 132 S. Ct. 402, 181 L. Ed. 2d 258 (2011).

[FN15] *National Organization for Marriage, Inc. v. Walsh*, 714 F.3d 682 (2d Cir. 2013).

[FN16] *U.S. v. State of Ala.*, 362 U.S. 602, 80 S. Ct. 924, 4 L. Ed. 2d 982 (1960).

[FN17] *Tanner v. McKeldin*, 202 Md. 569, 97 A.2d 449 (1953).

[FN18] *Reddix v. Lucky*, 252 F.2d 930 (5th Cir. 1958); *Hall v. Nagel*, 154 F.2d 931 (C.C.A. 5th Cir. 1946).

[FN19] *Progressive Party v. Flynn*, 400 Ill. 102, 79 N.E.2d 516 (1948).

[FN20] *Marchioro v. Chaney*, 90 Wash. 2d 298, 582 P.2d 487 (1978), judgment aff'd, 442 U.S. 191, 99 S. Ct. 2243, 60 L. Ed. 2d 816 (1979).

[FN21] *Mann v. Davis*, 213 F. Supp. 577 (E.D. Va. 1962), aff'd, 377 U.S. 678, 84 S. Ct. 1441, 12 L. Ed. 2d 609 (1964).

[FN22] *Hallahan v. Mittlebeeler*, 373 S.W.2d 726, 97 A.L.R.2d 215 (Ky. 1963).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 92

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
C. Governmental Acts and Agencies
3. Election Matters

[Topic Summary Correlation Table References](#)

§ 93. Qualifications to run for public office

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  81, 212

Declarations as to the eligibility of candidates to run for office have sometimes been denied on the ground that no justiciable controversy exists prior to the filing of a declaration of candidacy^[1] and that even after nomination, no justiciable controversy is presented since the nominee might not be elected.^[2] However, other courts have granted declaratory judgments regarding political candidates before the elections^[3] since the declaratory judgment act should be liberally construed to allow the court to resolve an uncertainty involving a person's candidacy by determining the person's status at a timely point; present voting rights often depend upon the determination of future questions.^[4]

[FN1] *State ex rel. Ruoff v. Rosellini*, 55 Wash. 2d 554, 348 P.2d 971 (1960).

[FN2] *Talton v. Dickinson*, 261 Ala. 11, 72 So. 2d 723 (1954).

[FN3] *Benesch v. Miller*, 446 P.2d 400 (Alaska 1968); *Jenkins v. Bogard*, 335 Ark. 334, 980 S.W.2d 270 (1998); *State ex rel. Robinson v. Craighead County Bd. of Election Com'rs*, 300 Ark. 405, 779 S.W.2d 169 (1989); *Ervin v. Collins*, 85 So. 2d 852, 59 A.L.R.2d 706 (Fla. 1956); *Kneip v. Herseth*, 87 S.D. 642, 214 N.W.2d 93 (1974).

[FN4] *Kneip v. Herseth*, 87 S.D. 642, 214 N.W.2d 93 (1974).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 93

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
C. Governmental Acts and Agencies
3. Election Matters

[Topic Summary Correlation Table References](#)

§ 94. Right to continue holding public office

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 81, 212

Declaratory judgments may be rendered to determine whether a candidate or a person already elected to office is eligible to hold such office where it is alleged that the person does not have the necessary qualifications, such as qualification as a lawyer in the case of a judge or county attorney,[1] or where it is alleged that the person is otherwise ineligible under the applicable statute.[2]

Since usurpation of office is an offense against the sovereignty of the people, a proceeding for ouster of the offender must be brought by the attorney general on behalf of the State, and a charge by a member of a board of education that other members have usurped and unlawfully exercised their office does not constitute an actual controversy sufficient to support an action for declaratory judgment.[3]

Caution:

A declaratory judgment cannot be granted in an action instituted by the attorney general to resolve conflicting claims of two parties to hold public office where, although a controversy exists between the parties, the attorney general takes no position adverse to the defendants.[4]

[FN1] *Howton v. Morrow*, 269 Ky. 1, 106 S.W.2d 81 (1937); *Spier v. Thomas*, 131 Neb. 579, 269 N.W. 61 (1936).

[FN2] *State v. Grove*, 109 Kan. 619, 201 P. 82, 19 A.L.R. 1116 (1921).

[FN3] *Marshall v. Hill*, 47 Del. 478, 93 A.2d 524 (Super. Ct. 1952).

[FN4] *Hampson v. State ex rel. Buckson*, 233 A.2d 155 (Del. 1967).

As to proper parties in a declaratory judgment action, see §§ 203 to 215.

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 94

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
C. Governmental Acts and Agencies
3. Election Matters

[Topic Summary Correlation Table References](#)

§ 95. Term limitations

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  81, 121, 212

Actions for declaratory judgment may be available in cases regarding the validity or application of statutes governing term limits.[1] Thus, the courts may determine whether, in view of a constitutional provision making certain elective officers ineligible to succeed themselves, one who has been elected to fill the unexpired term of a predecessor may run for the succeeding full term.[2] In particular, a case and controversy is present, sufficient to proceed in a declaratory judgment action, regarding a state constitutional amendment establishing term limitations on state constitutional officers and state legislators and limitations on the eligibility of candidates for the United States Senate and House of Representatives to have names placed on an election ballot; the effectiveness of such an amendment is a matter of significant public interest involving issues of constitutional law, with far-reaching impact, and the potential for imminent impairment of legitimate interests of elected officeholders and their supporters occasioned by the amendment.[3]

[FN1] *U.S. Term Limits, Inc. v. Hill*, 316 Ark. 251, 872 S.W.2d 349 (1994), judgment aff'd, 514 U.S. 779, 115 S. Ct. 1842, 131 L. Ed. 2d 881 (1995); *Van Valkenburgh v. Citizens for Term Limits*, 135 Idaho 121, 15 P.3d 1129 (2000); *Duggan v. Beermann*, 245 Neb. 907, 515 N.W.2d 788 (1994).

[FN2] *Ervin v. Collins*, 85 So. 2d 852, 59 A.L.R.2d 706 (Fla. 1956) (governor); *McGinnis v. Cossar*, 230 Ky. 213, 18 S.W.2d 988 (1929) (sheriff).

[FN3] *U.S. Term Limits, Inc. v. Hill*, 316 Ark. 251, 872 S.W.2d 349 (1994), judgment aff'd, 514 U.S. 779, 115 S. Ct. 1842, 131 L. Ed. 2d 881 (1995).

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
C. Governmental Acts and Agencies
4. Schools and School Boards

[Topic Summary Correlation Table References](#)

§ 96. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 81, 210

So long as the requirements of a justiciable controversy are otherwise satisfied,[1] an action for declaratory judgment is the appropriate remedy to determine such matters as the powers of a school board;[2] the jurisdictional priority of school districts;[3] the validity of a state's system of financing public education,[4] including the validity of statutes apportioning school costs between a township and a borough[5] and regarding tuition payment by the handicapped;[6] the right of boards of education to grant leave to teachers;[7] whether or not a teacher evaluation statute was violated;[8] the tenure rights of teachers;[9] teachers' rights regarding a notice of nonrenewal as prescribed by statute;[10] and the right of public school teachers to strike.[11]

[FN1] *Fenn v. Ozark City Schools Bd. of Educ.*, 9 So. 3d 484, 245 Ed. Law Rep. 531 (Ala. 2008) (the parties' positions as to the matter at issue were not in conflict); *District of Columbia v. American University*, 2 A.3d 175, 259 Ed. Law Rep. 685 (D.C. 2010) (a challenge to the issuance of a license became moot when the eligibility requirements were changed); *Bloome v. Juergensmeyer*, 344 Ill. App. 625, 101 N.E.2d 851 (3d Dist. 1951) (judgment would not terminate the controversy); *Washington Education Ass'n v. Washington State Public Disclosure Com'n*, 150 Wash. 2d 612, 80 P.3d 608, 183 Ed. Law Rep. 562 (2003) (a challenge to advisory guidelines was not justiciable).

[FN2] *Morgan v. Board of School Com'rs of Mobile County*, 248 Ala. 22, 26 So. 2d 108 (1946) (power to control school lands); *Board of Educ. of Boone County v. Bushee*, 889 S.W.2d 809, 96 Ed. Law Rep. 839 (Ky. 1994).

[FN3] *State ex rel. Hand v. Bilyeu*, 346 S.W.2d 221 (Mo. Ct. App. 1961), transferred to Mo. S. Ct., 351 S.W.2d 457 (Mo. 1961).

[FN4] *Pendleton School Dist. 16R v. State*, 345 Or. 596, 200 P.3d 133, 241 Ed. Law Rep. 423 (2009); *Washakie County School Dist. No. One v. Herschler*, 606 P.2d 310 (Wyo. 1980).

[FN5] Alfred Vail Mut. Ass'n v. Halpin, 107 N.J. Super. 517, 259 A.2d 477 (App. Div. 1969), judgment aff'd, 58 N.J. 40, 274 A.2d 801 (1971).

[FN6] Elliot v. Board of Ed. of City of Chicago, 64 Ill. App. 3d 229, 20 Ill. Dec. 928, 380 N.E.2d 1137 (1st Dist. 1978).

[FN7] Antioch Community High School Teachers' Ass'n v. Board of Ed. of Antioch Community High School Dist. No. 117, 2 Ill. App. 3d 504, 275 N.E.2d 683 (2d Dist. 1971).

[FN8] Smith v. School Dist. No. 45, Clackamas County, 63 Or. App. 685, 666 P.2d 1345, 12 Ed. Law Rep. 997 (1983).

[FN9] Frisk v. Board of Ed. of City of Duluth, 246 Minn. 366, 75 N.W.2d 504 (1956).

As to the application of declaratory judgment in matters involving teachers' contracts, generally, see § 125.

[FN10] Bentley v. School Dist. No. 025 of Custer County, Nebraska, 255 Neb. 404, 586 N.W.2d 306, 130 Ed. Law Rep. 900 (1998).

[FN11] Norwalk Teachers' Ass'n v. Board of Ed. of City of Norwalk, 138 Conn. 269, 83 A.2d 482, 31 A.L.R.2d 1133 (1951) (action by teachers' association permitted).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 96

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
C. Governmental Acts and Agencies
4. Schools and School Boards

[Topic Summary Correlation Table References](#)

§ 97. Constitutional matters

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  81, 210

In the context of education, if desired declaratory relief concerns the constitutionality or interpretation of a statute, the action should be entertained^[1] so long as the requirements of a justiciable controversy are otherwise met.^[2] Thus, declaratory judgment actions may be entertained to end the teaching of sectarian doctrine in public schools^[3] and to determine the constitutionality of statutes providing transportation, at public expense, for children attending private or parochial schools.^[4]

Even if changes to the method of funding public schools renders moot a declaratory judgment action challenging the method on the grounds that it does not provide a thorough education, such an action may fall into the public interest exception to the mootness doctrine; the issue whether current levels of state funding meet the constitutionally mandated requirement of thoroughness is a matter of great fundamental importance.^[5] The fact that there is a potential for legislation to alter the factual predicate of questions concerning the constitutionality of the current method of funding public schools is not enough to make the case moot.^[6]

[FN1] [Campbell County School Dist. v. Catchpole](#), 6 P.3d 1275, 146 Ed. Law Rep. 912 (Wyo. 2000).

[FN2] [Louisiana Federation of Teachers v. State](#), 94 So. 3d 760, 283 Ed. Law Rep. 612 (La. 2012) (plaintiff had not yet incurred any particularized harm); [Pendleton School Dist. 16R v. State](#), 345 Or. 596, 200 P.3d 133, 241 Ed. Law Rep. 423 (2009) (justiciability requirements were satisfied).

[FN3] [Zellers v. Huff](#), 1951-NMSC-072, 55 N.M. 501, 236 P.2d 949 (1951).

[FN4] [Mitchell v. Consol. School Dist. No. 201](#), 17 Wash. 2d 61, 135 P.2d 79, 146 A.L.R. 612 (1943).

[FN5] [Idaho Schools for Equal Educational Opportunity By and Through Eikum v. Idaho State Bd. of Educ. By and Through Mossman](#), 128 Idaho 276, 912 P.2d 644, 107 Ed. Law Rep. 1010 (1996).

[FN6] [Coalition for Equitable School Funding, Inc. v. State](#), 311 Or. 300, 811 P.2d 116, 67 Ed. Law Rep. 1311 (1991).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 97

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
C. Governmental Acts and Agencies
5. Taxation; Licensing Taxes
a. State Statutes
(1) In General

[Topic Summary Correlation Table References](#)

§ 98. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  127, 213.1 to 217

Statutory provisions for declaratory judgments are generally broad enough in scope to authorize actions determining the constitutionality or validity of a tax statute, ordinance, or regulation,[1] and to obtain a construction of a tax statute or ordinance,[2] although the court may, as in other cases, use its discretion to refuse to render a declaratory judgment in cases involving tax questions.[3] Absent a valid federal prohibition, the state courts are free to issue declaratory judgments in state tax cases under state law.[4] However, the use of declaratory judgments in the field of taxation is somewhat more restricted than in other areas because the existence of an exclusive or otherwise adequate remedy is frequently held to preclude such action.[5] Where the challenge is based on the legislature acting beyond its authority, however, declaratory relief may be considered as against the argument that to do so amounts to a judicial intrusion into the budgetary process, the exclusive domain of the executive and legislative branches of government.[6]

Declaratory relief will be denied where another action, in which the tax controversy can be adequately determined, is pending;[7] or where, by reason of the absence of necessary parties or otherwise, the declaration sought would not terminate the controversy;[8] or where an action for a declaratory judgment is prohibited by a statute which provides that no injunction, writ of mandate, or other legal or equitable process shall issue to prevent or enjoin the collection of the tax in question.[9] A taxpayer may be required to pay taxes due prior to proceeding with a declaratory judgment, where the controlling statutory provisions so provide,[10] and under some statutory schemes, the taxpayer's remedy is to file a statutory refund action;[11] however, where payment under protest is not an exclusive remedy, declaratory relief may be available,[12] and in some instances, a party may proceed to obtain a declaratory judgment without complying with hollow formalities.[13] Declaratory relief may be unavailable with respect to interests in property subject to a federal tax lien, given the special exception for disputes involving federal taxes.[14]

[FN1] *Andover Sav. Bank v. Commissioner of Revenue*, 387 Mass. 229, 439 N.E.2d 282 (1982); *Trumble v. Sarpy County Bd.*, 283 Neb. 486, 810 N.W.2d 732, 278 Ed. Law Rep. 591 (2012); *Friendship Village of Greater Milwaukee, Inc. v. City of Milwaukee*, 181 Wis. 2d 207, 511 N.W.2d 345 (Ct. App. 1993).

As to declaratory judgment actions regarding statutes and ordinances, generally, see §§ 55 to 76.

[FN2] *Crow Tribe of Indians v. State of Mont.*, 819 F.2d 895 (9th Cir. 1987), judgment aff'd, 484 U.S. 997, 108 S. Ct. 685, 98 L. Ed. 2d 638 (1988); *Mathis v. Cooperative Vendors, Inc.*, 170 Ind. App. 659, 354 N.E.2d 269 (1976); *Dan Nelson, Automotive, Inc. v. Viken*, 2005 SD 109, 706 N.W.2d 239 (S.D. 2005).

[FN3] *Lerner Shops of Conn., Inc. v. Town of Waterbury*, 151 Conn. 79, 193 A.2d 472 (1963); *Dodge v. Town of Norridgewock*, 577 A.2d 346 (Me. 1990); *Haughton v. Lankford*, 189 Va. 183, 52 S.E.2d 111 (1949).

[FN4] *National Private Truck Council, Inc. v. Oklahoma Tax Com'n*, 515 U.S. 582, 115 S. Ct. 2351, 132 L. Ed. 2d 509 (1995).

[FN5] §§ 103, 107.

[FN6] *New York State Bankers Ass'n, Inc. v. Wetzler*, 81 N.Y.2d 98, 595 N.Y.S.2d 936, 612 N.E.2d 294 (1993).

[FN7] *City of Cabot v. Morgan*, 228 Ark. 1084, 312 S.W.2d 333 (1958); *Nims v. Grand Trunk Western R. Co.*, 326 Mich. 371, 40 N.W.2d 188 (1949).

[FN8] *Southern Ry. Co. v. Curry*, 239 Ala. 263, 194 So. 523 (1940); *National Ice & Cold Storage Co. of California v. Pacific Fruit Express Co.*, 11 Cal. 2d 283, 79 P.2d 380 (1938); *Huester v. Lackawanna County*, 308 Pa. 9, 161 A. 537 (1932).

[FN9] *Casey v. Bonelli*, 93 Cal. App. 2d 253, 208 P.2d 723 (1st Dist. 1949); *Prudential Ins. Co. of America v. Powell*, 217 N.C. 495, 8 S.E.2d 619 (1940).

[FN10] *Jefferson v. Big Horn County*, 235 Mont. 148, 766 P.2d 244 (1988).

[FN11] *Rawson v. Harlan County*, 247 Neb. 944, 530 N.W.2d 923 (1995).

[FN12] *Agar School Dist. No. 58-1 Bd. of Educ., Agar, S.D. v. McGee*, 527 N.W.2d 282 (S.D. 1995).

[FN13] *Nicolai v. City of St. Louis*, 762 S.W.2d 423 (Mo. 1988).

[FN14] *E.J. Friedman Co., Inc. v. U.S.*, 6 F.3d 1355 (9th Cir. 1993).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
C. Governmental Acts and Agencies
5. Taxation; Licensing Taxes
a. State Statutes
(1) In General

Topic Summary Correlation Table References

§ 99. Suits against taxing officials or agencies

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  213.1, 216

A suit against taxing officials challenging the constitutionality of a tax statute may be properly considered in an action for declaratory judgment.^[1] A declaratory judgment action challenging the applicability of a state sales tax brought against state officials in their individual and representative capacities properly avoids a state's immunity against suit without consent.^[2]

[FN1] *American Life & Acc. Ins. Co. of Ky. v. Jones*, 152 Ohio St. 287, 40 Ohio Op. 326, 89 N.E.2d 301, 14 A.L.R.2d 815 (1949).

As to government or public officers as defendant parties in declaratory judgment actions, see [§ 209](#).

[FN2] *Mathis v. Cooperative Vendors, Inc.*, 170 Ind. App. 659, 354 N.E.2d 269 (1976).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 99

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
C. Governmental Acts and Agencies
5. Taxation; Licensing Taxes
a. State Statutes
(1) In General

Topic Summary Correlation Table References

§ 100. Actual controversy requirement

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  213.1

The general rule that declaratory judgments are rendered only where there is an actual controversy naturally applies to actions concerning taxes;[1] generally, this requirement will not be dispensed with merely because there is great public interest in the question or because the constitutionality of a tax statute is involved[2] although there may be particular circumstances involving matters of sufficient public import to warrant the relaxation of the traditional jurisdictional prerequisites of justiciability.[3]

An allegation that a building has been appraised for taxation, and a tax assessed against the owner, may be sufficient to show the existence of an actual controversy without alleging that any proceeding has been brought or threatened to collect such tax.[4] Moreover, where the party's present property interest is immediately and directly affected, there is a sufficient interest at stake to entertain a declaratory judgment action even though the controversy centers around future acts by the party.[5] On the other hand, declaratory judgment is not available to determine whether a proposed charter amendment dealing with limitations on the tax levy, not yet submitted to voters, is unconstitutional since such a judgment would, in effect, be an advisory opinion pending the outcome of voter approval or disapproval.[6]

[FN1] *Ryan, Inc. v. New York State Dept. of Taxation and Finance*, 83 A.D.3d 482, 920 N.Y.S.2d 358 (1st Dep't 2011), leave to appeal denied, 17 N.Y.3d 707, 929 N.Y.S.2d 799, 954 N.E.2d 90 (2011); *Town of Eagle v. Christensen*, 191 Wis. 2d 301, 529 N.W.2d 245 (Ct. App. 1995).

[FN2] *State ex rel. Smith v. Haveland*, 223 Minn. 89, 25 N.W.2d 474, 174 A.L.R. 544 (1946).

[FN3] *Memorial Hosp. of Laramie County v. Department of Revenue and Taxation of State of Wyo.*, 770 P.2d 223 (Wyo. 1989).

[FN4] *Gifford Memorial Hospital v. Town of Randolph*, 119 Vt. 66, 118 A.2d 480 (1955).

[FN5] *Matter of McCorkle*, 209 B.R. 773 (Bankr. M.D. Ga. 1997).

[FN6] *Coalson v. City Council of Victoria*, 610 S.W.2d 744 (Tex. 1980).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 100

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
C. Governmental Acts and Agencies
5. Taxation; Licensing Taxes
a. State Statutes
(1) In General

Topic Summary Correlation Table References

§ 101. Substantial interest requirement

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  213.1

In order to maintain a declaratory judgment action, the plaintiff must have a substantial interest in the subject matter of the litigation.[1] Thus, a taxpayer cannot seek to have a tax statute construed where the effect of that construction will not affect the taxpayer's personal rights.[2]

While a landowner's declaratory judgment petition is the proper vehicle by which to challenge the constitutionality of a town's taxation method,[3] the courts cannot declare a taxing scheme unconstitutional as applied absent proof of harm.[4]

[FN1] § 59.

[FN2] *McGee v. Dunnigan*, 138 Conn. 263, 83 A.2d 491 (1951).

[FN3] *Tyler Road Development Corp. v. Town of Londonderry*, 145 N.H. 615, 766 A.2d 267 (2000).

[FN4] *Sirrell v. State*, 146 N.H. 364, 780 A.2d 494 (2001).

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
C. Governmental Acts and Agencies
5. Taxation; Licensing Taxes
a. State Statutes
(1) In General

Topic Summary Correlation Table References

§ 102. Particular tax matters subject to declaratory judgment

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  213.1 to 216

Declaratory judgment actions have been used to raise the question of who is subject to, or liable for, a specific tax;[1] to determine the powers and duties of taxing officials;[2] to determine whether property is exempt from tax;[3] and to determine the appropriateness of assessments.[4] However, it has been said that the method by which valuation of property for taxation purposes is to be formulated is a legislative function and not a proper subject for declaratory relief.[5]

[FN1] *Bufkin v. U.S.*, 2013-1 U.S. Tax Cas. (CCH) ¶50381, 111 A.F.T.R.2d 2013-2349, 2013 WL 2663204 (11th Cir. 2013); *Cobb v. Harrington*, 144 Tex. 360, 190 S.W.2d 709, 172 A.L.R. 837 (1945).

[FN2] *Kelly v. Bastedo*, 70 Ariz. 371, 220 P.2d 1069 (1950); *Ahavas Chaverim Gemilas Chesed, Inc. v. Town of Mamakating*, 99 A.D.3d 1156, 953 N.Y.S.2d 334 (3d Dep't 2012); *Childs v. Marion County, Or.*, 163 Or. 411, 97 P.2d 955 (1940); *Brennan v. City of Willow Park*, 376 S.W.3d 910 (Tex. App. Fort Worth 2012), review denied, (2 pets.)(Feb. 15, 2013).

[FN3] *German Masonic Temple Ass'n of City of New York v. City of New York*, 279 N.Y. 452, 18 N.E.2d 657 (1939); *Gifford Memorial Hospital v. Town of Randolph*, 119 Vt. 66, 118 A.2d 480 (1955).

[FN4] *V-1 Oil Co. v. Lacy*, 97 Idaho 468, 546 P.2d 1176 (1976).

[FN5] *Board of County Com'rs of Eagle County, State of Colo. v. Colorado Bd. of Assessment Appeals*, 628 P.2d 156 (Colo. App. 1981).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 102

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
C. Governmental Acts and Agencies
5. Taxation; Licensing Taxes
a. State Statutes
(2) Effect of Existence of Other Remedy

[Topic Summary Correlation Table References](#)

§ 103. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  127, 213.1 to 216

Trial courts may not have jurisdiction to entertain actions seeking a declaratory judgment where an exclusive or adequate statutory remedy is prescribed^[1] or where statutorily required administrative proceedings have not been exhausted;^[2] taxpayers are generally required to exhaust their administrative remedies by filing a claim for a refund before bringing a declaratory judgment action challenging a property tax program.^[3] Thus, declaratory relief is often denied in tax cases either on the ground that other adequate remedies exist or that special statutory remedies provided for tax cases are exclusive,^[4] recognizing that a declaratory judgment is not a substitute for statutory procedure.^[5]

Whether declaratory relief is appropriate in a particular case may depend on whether the plaintiff can show that the procedures before the administrative agency would not afford adequate relief^[6] or otherwise show that the legal remedy is inadequate.^[7] In some jurisdictions, the court may have discretion as to whether a declaratory action should be permitted, such as where the issue is important or novel or recurrent, or the decision will have public significance affecting the interests of many besides the litigants, or where the case reduces to an issue of law without dispute as to facts.^[8]

[FN1] *Boettcher v. Balka*, 252 Neb. 547, 567 N.W.2d 95 (1997); *Labor Ready Northeast, Inc. v. Director, Div. of Taxation*, 25 N.J. Tax 607, 2011 WL 103032 (2011) (adequate or appropriate alternative remedy); *Muskogee Fair Haven Manor Phase I, Inc. v. Scott*, 1998 OK 26, 957 P.2d 107 (Okla. 1998).

[FN2] *Grand Lodge of Ancient and Accepted Masons of New Mexico v. Taxation and Revenue Dept. of State of N.M.*, 106 N.M. 179, 1987-NMCA-081, 740 P.2d 1163 (Ct. App. 1987).

[FN3] *State Bd. of Tax Com'rs v. Montgomery*, 730 N.E.2d 680 (Ind. 2000) (applied rule even though

statute did not authorize taxing agency to order refunds).

[FN4] *Butts County v. Briscoe*, 236 Ga. 233, 223 S.E.2d 199 (1976); *Hartmann v. Sibley County Bd. of Com'rs*, 2010 WL 696969 (Minn. Ct. App. 2010); *Muskogee Fair Haven Manor Phase I, Inc. v. Scott*, 1998 OK 26, 957 P.2d 107 (Okla. 1998); *Forrest C. Gearhart, Inc. v. Com., Dept. of Revenue, Bureau of Sales and Use Tax*, 27 Pa. Commw. 70, 365 A.2d 908 (1976); *State ex rel. Paige v. Canady*, 189 W. Va. 650, 434 S.E.2d 10 (1993).

As to exclusion of tax matters from federal declaratory judgment actions, see §§ 109 to 113.

[FN5] *V-1 Oil Co. v. Bannock County*, 97 Idaho 807, 554 P.2d 1304 (1976).

[FN6] *Jackson County Iron Co. v. Musolf*, 134 Wis. 2d 95, 396 N.W.2d 323 (1986).

[FN7] *National Private Truck Council, Inc. v. Oklahoma Tax Com'n*, 515 U.S. 582, 115 S. Ct. 2351, 132 L. Ed. 2d 509 (1995); *Vogl v. Department of Revenue*, 327 Or. 193, 960 P.2d 373 (1998).

[FN8] *S. J. Groves & Sons Co. v. State Tax Commission*, 372 Mass. 140, 360 N.E.2d 895 (1977).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 103

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
C. Governmental Acts and Agencies
5. Taxation; Licensing Taxes
a. State Statutes
(2) Effect of Existence of Other Remedy

[Topic Summary Correlation Table References](#)

§ 104. Procedure for obtaining refund

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  [213.1](#) to [216](#)

The strong public policy requiring a taxpayer challenging a tax assessment to pay the tax and sue for a refund applies to declaratory relief actions.[1] The remedy in the state courts is ordinarily considered adequate, and declaratory relief barred, if the taxpayer may pay his or her taxes under protest and obtain an enforceable judgment for a refund.[2] This is true even where the payments made under protest are not segregated but become part of general state revenues.[3] However, a declaratory judgment may be appropriate to challenge the validity of an assessment before the commitment of the assessment to the collector of taxes even where after such commitment, an action to recover an unlawfully collected tax is the exclusive remedy.[4]

In cases where a statutory remedy is not treated as exclusive, a recognized alternate remedy either under common law principles or another statute may be recognized; thus, where there is no common law action for recovery of taxes paid under mistake of law, there can be no declaratory judgment action with respect to such taxes, the taxpayer's only recourse being to the statutory refund procedure.[5]

A taxpayer who has received the benefit of a final determination of overassessment by the state tax court need not follow a statutory procedure for obtaining a refund since the refund is then mandatory but may seek a refund through an action for a declaratory judgment determining its tax liabilities in light of the decision of the state tax court.[6]

[FN1] *Chodos v. City of Los Angeles*, 195 Cal. App. 4th 675, 125 Cal. Rptr. 3d 694 (2d Dist. 2011), review denied, (July 27, 2011).

[FN2] *Sterling Shoe Co. v. Norberg*, 411 F. Supp. 128 (D.R.I. 1976); *V-1 Oil Co. v. Bannock County*, 97 Idaho 807, 554 P.2d 1304 (1976); *Uretsky v. Baschen*, 47 Ill. App. 3d 169, 5 Ill. Dec. 552, 361

N.E.2d 875 (2d Dist. 1977).

[FN3] *Sterling Shoe Co. v. Norberg*, 411 F. Supp. 128 (D.R.I. 1976).

[FN4] *California Village Corp. v. Town of East Longmeadow*, 4 Mass. App. Ct. 128, 343 N.E.2d 427 (1976).

[FN5] *Apostol v. Anne Arundel County*, 288 Md. 667, 421 A.2d 582 (1980).

[FN6] *Baltimore County v. Xerox Corp.*, 41 Md. App. 465, 397 A.2d 278 (1979), judgment aff'd, 286 Md. 220, 406 A.2d 917 (1979).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 104

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
C. Governmental Acts and Agencies
5. Taxation; Licensing Taxes
a. State Statutes
(2) Effect of Existence of Other Remedy

[Topic Summary Correlation Table References](#)

§ 105. Appeal from assessment

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  216

Declaratory relief has been denied where the taxpayer is afforded a complete remedy by a state statute providing for appeal from an assessment.[1] Where a taxpayer has pursued the exclusive remedy provided to protest a reevaluation of its property and the tax court has ruled in the taxpayer's favor, the taxpayer is considered to have exhausted the remedy and may resort to declarative relief to obtain a refund of taxes wrongly collected by a county rather than resorting to the remedy provided for seeking refunds.[2] However, a declaratory judgment action may be allowed to proceed where there is no mandatory statutory language requiring a person aggrieved by a final decision of the tax authorities to have that decision judicially reviewed.[3] Moreover, an appeal from an assessment is not rendered an inadequate remedy because the period of limitations within which the appeal must be filed has expired prior to the taxing county's discovery that the assessment in question did not include certain inventory manufactured by the party.[4]

Questions may arise concerning the availability of an appeal under given circumstances; a declaratory judgment proceeding may be available if the procedures available are not adequate[5] or if the remedy sought is not within the authority before the tribunal prescribed for an appeal, rendering the taxpayer effectively without an appeal.[6]

While the validity of an assessment cannot be determined in a declaratory judgment proceeding where the statute provides a complete remedy which is obviously intended to be exclusive,[7] where it is charged that an entire assessment is void for noncompliance with the statutory assessment process, an appeal from the assessment is not necessary, since the action does not go merely to the amount of the assessment, and a declaratory judgment is appropriate.[8] Similarly, an appeal is unnecessary where it is the assessment procedure,[9] or the administrative assessment appeal procedure,[10] which is being challenged.

[FN1] *Wyandotte Chemicals Corp. v. City of Wyandotte*, 321 F.2d 927 (6th Cir. 1963) (referring to Michigan statute); *State Dept. of Assessments and Taxation v. Clark*, 281 Md. 385, 380 A.2d 28 (1977); *Krahl v. Nine Mile Creek Watershed Dist.*, 283 N.W.2d 538 (Minn. 1979).

[FN2] *Baltimore County v. Xerox Corp.*, 41 Md. App. 465, 397 A.2d 278 (1979), judgment *aff'd*, 286 Md. 220, 406 A.2d 917 (1979).

[FN3] *Chavez v. Canyon County, State, ex rel. its Duly Elected Bd. of County Com'rs*, 152 Idaho 297, 271 P.3d 695 (2012).

[FN4] *Baltimore County v. Maryland Dept. of Assessments and Taxation*, 47 Md. App. 88, 421 A.2d 993 (1980).

[FN5] *City of South Bend v. Brookfield Farm*, 418 N.E.2d 305 (Ind. Ct. App. 1981).

[FN6] *V-1 Oil Co. v. Lacy*, 97 Idaho 468, 546 P.2d 1176 (1976).

[FN7] *Crews v. Collins*, 252 Iowa 863, 109 N.W.2d 235 (1961).

[FN8] *Adams v. Reid*, 396 So. 2d 1182 (Fla. 4th DCA 1981); *S.D. Realty Co. v. City of Milwaukee*, 9 Wis. 2d 134, 100 N.W.2d 318 (1960).

[FN9] *Town of Shandaken v. State Bd. of Equalization and Assessment*, 97 A.D.2d 179, 470 N.Y.S.2d 802 (3d Dep't 1983), order *aff'd*, 63 N.Y.2d 442, 483 N.Y.S.2d 161, 472 N.E.2d 989 (1984); *Hillside Colony Inc. v. Barbolt*, 86 Misc. 2d 20, 381 N.Y.S.2d 611 (Sup 1976).

[FN10] *Kowenhoven v. County of Allegheny*, 587 Pa. 545, 901 A.2d 1003 (2006).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 105

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
C. Governmental Acts and Agencies
5. Taxation; Licensing Taxes
a. State Statutes
(2) Effect of Existence of Other Remedy

Topic Summary Correlation Table References

§ 106. Constitutional challenges

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  127, 213.1 to 216

Even where a statute purports to provide an exclusive remedy for judicial review of a tax matter, a declaratory judgment may be appropriate where the jurisdiction of the taxing authority is being challenged on the ground that the statute is unconstitutional.[1] Provided that a justiciable controversy is presented,[2] a declaratory judgment action is appropriate, notwithstanding the availability of administrative remedies, where the plaintiffs challenge the constitutionality of tax enabling legislation rather than the imposition of taxes.[3]

Caution:

A mere challenge to the wisdom of taxing districts' legislative enactments is not enough to make a declaratory judgment appropriate.[4]

Some jurisdictions may limit declaratory relief to cases in which the constitutionality of a statute in its entirety is involved and there is no bypassing of the expertise of the administrative agency, and the special form of remedy is inadequate or does not provide for judicial review.[5]

Observation:

In at least one instance where the taxing agency declined to determine a facial constitutional challenge, that failure constituted a waiver of the prerequisite that the taxpayer exhaust administrative remedies, and a declaratory judgment action was allowed.[6]

While a taxing statute may provide that review by certiorari of determinations by the state tax commission will be exclusive, a taxpayer may nevertheless maintain an action for a declaratory judgment where the taxpayer challenges the jurisdiction of the tax officials on the ground that the statute is unconstitutional or that the statute by its own terms does not apply to the taxpayer.[7] However, under such a statute, where no special necessity

exists for the use of declaratory judgment proceedings, as where the taxpayer merely seeks to review or attack assessments, the taxpayer is bound to follow the statutory procedure, and declaratory relief will be denied.[8]

A constitutional challenge by landowners to the equality and uniformity of city taxation in an annexed area after a consent judgment delayed annexation of part of the area presents a proper question for the courts in a declaratory judgment action.[9]

[FN1] *Rodgers v. Whitley*, 282 Ill. App. 3d 741, 218 Ill. Dec. 191, 668 N.E.2d 1023 (1st Dist. 1996); *Troy Towers Redevelopment Co., Inc. v. City of Troy*, 51 A.D.2d 173, 380 N.Y.S.2d 89 (3d Dep't 1976), order aff'd, 41 N.Y.2d 816, 393 N.Y.S.2d 397, 361 N.E.2d 1045 (1977).

[FN2] *Metropolitan Life Ins. Co. v. Kinsman*, 2009 SD 53, 768 N.W.2d 540 (S.D. 2009) (an action for a declaratory judgment that taxes on insurance premiums and annuities were unconstitutional was moot).

[FN3] *Lyman v. City of Philadelphia*, 108 Pa. Commw. 494, 529 A.2d 1194 (1987).

[FN4] *Mazur v. Trinity Area School Dist.*, 926 A.2d 1260 (Pa. Commw. Ct. 2007), aff'd, 599 Pa. 232, 961 A.2d 96 (2008).

[FN5] *Verkouteren v. Supervisor of Assessments, Montgomery County*, 38 Md. App. 216, 380 A.2d 642 (1977).

[FN6] *Shell Oil Co. v. Bair*, 417 N.W.2d 425 (Iowa 1987).

[FN7] *Berkshire Fine Spinning Associates, Inc. v. City of New York*, 5 N.Y.2d 347, 184 N.Y.S.2d 623, 157 N.E.2d 614 (1959).

[FN8] *Peters v. State Tax Commission*, 18 A.D.2d 886, 237 N.Y.S.2d 613 (1st Dep't 1963), judgment aff'd, 13 N.Y.2d 1148, 247 N.Y.S.2d 139, 196 N.E.2d 568 (1964).

[FN9] *Highwoods Properties, Inc. v. City of Memphis*, 297 S.W.3d 695 (Tenn. 2009).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 106

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
C. Governmental Acts and Agencies
5. Taxation; Licensing Taxes
a. State Statutes
(2) Effect of Existence of Other Remedy

Topic Summary Correlation Table References

§ 107. Particular circumstances where declaratory relief is barred

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  213.1 to 216

Declaratory relief may be denied where the taxpayer has a remedy by mandamus^[1] or by a petition for abatement in the case of an alleged overvaluation of property,^[2] where the statute provides for review by certiorari of the tax commission's determination,^[3] or where an income tax statute specifically designates the manner in which the amount of income taxes due shall be litigated.^[4]

[FN1] *Lerner Shops of Conn., Inc. v. Town of Waterbury*, 151 Conn. 79, 193 A.2d 472 (1963).

[FN2] *Indian Head Nat. Bank of Portsmouth v. City of Portsmouth*, 117 N.H. 954, 379 A.2d 1270 (1977).

[FN3] *Peters v. State Tax Commission*, 18 A.D.2d 886, 237 N.Y.S.2d 613 (1st Dep't 1963), judgment aff'd, 13 N.Y.2d 1148, 247 N.Y.S.2d 139, 196 N.E.2d 568 (1964); *Pascale v. Capaldi*, 95 R.I. 513, 188 A.2d 378 (1963).

[FN4] *Williams v. Tawes*, 179 Md. 224, 17 A.2d 137, 132 A.L.R. 1105 (1941).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 107

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
C. Governmental Acts and Agencies
5. Taxation; Licensing Taxes
a. State Statutes
(2) Effect of Existence of Other Remedy

Topic Summary Correlation Table References

§ 108. Particular circumstances where declaratory relief not barred

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  127, 213.1 to 216

In some jurisdictions, declaratory relief will not be denied merely because of the possibility of some other form of remedy,[1] and in particular, an action for declaratory judgment is not precluded where the statutory provisions do not disclose the legislature's intention that such procedure should be the exclusive method for determining the exemption of property from taxation.[2]

The statutory provisions for declaratory judgment may specifically provide that the remedy should not be construed by the courts as unusual or extraordinary but should be construed to be an alternative or cumulative remedy, in which case a taxpayer may obtain a declaratory judgment to determine the taxpayer's right to have taxes refunded.[3]

[FN1] *Pressman v. State Tax Commission*, 204 Md. 78, 102 A.2d 821 (1954); *Andover Sav. Bank v. Commissioner of Revenue*, 387 Mass. 229, 439 N.E.2d 282 (1982); *S. J. Groves & Sons Co. v. State Tax Commission*, 372 Mass. 140, 360 N.E.2d 895 (1977).

[FN2] *Iroquois Post No. 229*, *Am. Legion v. City of Louisville*, 279 S.W.2d 13 (Ky. 1955).

[FN3] *Rinehart v. Reliance Life Ins. Co. of Ga.*, 272 Ala. 93, 128 So. 2d 503 (1961).

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
C. Governmental Acts and Agencies
5. Taxation; Licensing Taxes
b. Federal Taxes

[Topic Summary Correlation Table References](#)

§ 109. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  213.1, 217

A.L.R. Library

[What constitutes “tax” under Tax Injunction Act \(28 U.S.C.A. sec. 1341\), which prohibits federal district courts from interfering with assessment, levy, or collection of state taxes, 151 A.L.R. Fed. 387](#)

Forms

[Am. Jur. Pleading and Practice Forms, Federal Practice and Procedure § 1374](#) (Motion and notice—To dismiss action for declaratory relief—Federal tax question involved)

The federal statute for declaratory judgments includes a particular exception for federal taxes;^[1] thus, the federal courts generally may not render declaratory judgments with respect to federal taxes^[2] other than actions for declaratory judgments relating to the status and classification of charitable organizations^[3] or proceedings to determine the tax liability of the bankrupt debtor.^[4] This is true even though exceptional and extraordinary circumstances are shown.^[5]

Declaratory relief will be denied to determine the applicability of the tax laws to particular individuals^[6] or the validity of revenue rulings,^[7] deficiency notices,^[8] and IRS garnishment procedures.^[9] Declaratory relief also may not be sought to challenge the constitutionality of an Internal Revenue Service investigation of an organization's tax status^[10] or the disallowance of charitable contributions.^[11]

[FN1] 28 U.S.C.A. § 2201(a).

[FN2] [Liberty University, Inc. v. Lew, 2013-2 U.S. Tax Cas. \(CCH\) ¶50432, 112 A.F.T.R.2d](#)

2013-5089, 2013 WL 3470532 (4th Cir. 2013); *Cameron v. I.R.S.*, 773 F.2d 126 (7th Cir. 1985); *Cohen v. U.S.*, 650 F.3d 717 (D.C. Cir. 2011).

[FN3] 26 U.S.C.A. § 7428.

[FN4] § 111.

[FN5] *Martin v. Andrews*, 238 F.2d 552, 65 A.L.R.2d 543 (9th Cir. 1956).

[FN6] *Bufkin v. U.S.*, 2013-1 U.S. Tax Cas. (CCH) ¶50381, 111 A.F.T.R.2d 2013-2349, 2013 WL 2663204 (11th Cir. 2013); *Kaufman v. I.R.S.*, 787 F. Supp. 2d 27 (D.D.C. 2011).

[FN7] *Educo, Inc. v. Alexander*, 557 F.2d 617 (7th Cir. 1977).

[FN8] *Blech v. U.S.*, 595 F.2d 462 (9th Cir. 1979).

[FN9] *Sims v. U.S.*, 575 F.2d 1338 (6th Cir. 1978).

[FN10] *Life Science Church v. Internal Revenue Service*, 525 F. Supp. 399 (N.D. Cal. 1981).

[FN11] *Ecclesiastical Order of the ISM of AM, Inc. v. I.R.S.*, 725 F.2d 398 (6th Cir. 1984).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 109

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
C. Governmental Acts and Agencies
5. Taxation; Licensing Taxes
b. Federal Taxes

[Topic Summary Correlation Table References](#)

§ 110. Declaratory relief granted

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  [213.1](#), [217](#)

The exception denying declaratory relief in cases involving federal income taxes is designed to protect the government's need to assess and collect taxes expeditiously with a minimum of preenforcement judicial interference. Thus, it does not apply in cases where the determination being sought is not directly related to the assessment of federal taxes.[1] Thus, a taxpayer whose property has been seized and sold by the federal government for nonpayment of federal taxes may thereafter file a declaratory judgment action against the United States to quiet title to such property provided he or she refrains from testing the merits of the underlying tax assessment itself.[2]

The exception applies only as between the taxpayer and the tax official, and it does not apply to a suit by a third person to establish the priority of a lien on the property which the IRS seeks to subject to a claim for taxes owed by another.[3] Accordingly, an action may be brought against the tax authorities for a declaration that certain property belongs to the plaintiff and that it should not be sold to pay the tax obligation of another person.[4] Similarly, a declaratory judgment is available to property owners threatened by a government levy for the payment of the tax liability of the previous owner, even though the federal court is prevented from granting declaratory relief to a taxpayer concerning the assessment and collection of taxes against that taxpayer under the particular provisions for declaratory judgment in federal law, because an action brought by a plaintiff other than the taxpayer, which seeks to obtain declaratory relief regarding interests in real property in which the Internal Revenue Service claims an interest, is not prohibited.[5]

[FN1] *Sea-Land Service, Inc. v. U.S.*, 622 F. Supp. 769 (D.N.J. 1985).

[FN2] *Aqua Bar & Lounge, Inc. v. U. S. Dept. of Treasury Internal Revenue Service*, 539 F.2d 935, 38 A.L.R. Fed. 887 (3d Cir. 1976).

[FN3] *Tomlinson v. Smith*, 128 F.2d 808 (C.C.A. 7th Cir. 1942); *Pettengill v. U.S.*, 205 F. Supp. 10 (D. Vt. 1962).

[FN4] *Bullock v. Latham*, 306 F.2d 45 (2d Cir. 1962); *Ingham v. Hubbell*, 462 F. Supp. 59 (S.D. Iowa 1978), judgment aff'd, 596 F.2d 315 (8th Cir. 1979).

[FN5] *Talbot v. U.S.*, 850 F. Supp. 969 (D. Wyo. 1994).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 110

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
C. Governmental Acts and Agencies
5. Taxation; Licensing Taxes
b. Federal Taxes

Topic Summary Correlation Table References

§ 111. Bankruptcy claims

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  [213.1](#), [217](#)

Despite the general prohibition against rendering declaratory judgments with respect to federal taxes, federal courts may render such declarations in proceedings to determine the tax liability of the bankrupt debtor.^[1] Thus, a proceeding under provisions governing bankruptcy to determine federal taxes owed is exempted from the statutory bar against the granting of declaratory judgments with respect to federal taxes,^[2] and a bankrupt's application to determine the dischargeability of tax debts owing to the United States is not prohibited by the federal declaratory judgment statute.^[3] Moreover, the Tax Injunction Act does not prevent a bankruptcy court from hearing a Chapter 11 debtor's request for a declaratory judgment as to the application of a state's graduated tax on gross receipts from slot machines, in the exercise of its statutory authority^[4] to "determine the amount or legality of any tax."^[5]

[FN1] 11 U.S.C.A. § 505.

[FN2] *Sterling Consulting Corp. v. U.S.*, 245 F.3d 1161 (10th Cir. 2001).

[FN3] *Bostwick v. U.S.*, 521 F.2d 741 (8th Cir. 1975).

[FN4] 11 U.S.C.A. § 505(a)(1).

[FN5] *In re Indianapolis Downs, LLC*, 462 B.R. 104 (Bankr. D. Del. 2011).

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
C. Governmental Acts and Agencies
5. Taxation; Licensing Taxes
c. Federal Court Cases Involving State Tax Litigation

[Topic Summary Correlation Table References](#)

§ 112. State tax litigation

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  81, 213.1

Forms

[Federal Procedural Forms § 21:56](#) (Motion—To dismiss action for declaratory relief—State tax question involved where adequate remedy available in state court)

While the prohibition against declaratory judgments regarding federal taxes is not extended to deny the jurisdiction of the federal courts in causes seeking to have the constitutionality of state tax statutes determined,[1] the Federal Tax Injunction Act provides that the district courts may not enjoin, suspend, or restrain the assessment, levy, or collection of any tax under state law where a plain, speedy, and efficient remedy may be had in the courts of such state.[2] This generally precludes the granting of declaratory relief by federal courts in cases involving state taxation.[3] The mere illegality or unconstitutionality of the state tax is not in itself a ground for equitable relief in the federal courts as long as the state remedy is adequate[4] although where it is clear that the remedy in the state courts is not plain, speedy, and efficient, the federal courts are not barred from entertaining a declaratory judgment.[5] Moreover, the Tax Injunction Act does not prevent a bankruptcy court from determining the amount or legality of any tax.[6]

Observation:

The Tax Injunction Act prohibits declaratory relief when such relief would thwart state tax collection.[7] If federal declaratory relief were available to test state tax assessments, state tax administration might be thrown into disarray, and taxpayers might escape the ordinary procedural requirements imposed by state law; the collection of revenue under the challenged law might be obstructed while the federal suit is pending.[8]

[FN1] [Morrison-Knudsen Co. v. State Bd. of Equalization of Wyoming](#), 35 F. Supp. 553 (D. Wyo.

1940).

[FN2] 28 U.S.C.A. § 1341.

[FN3] Franchise Tax Bd. of California v. Alcan Aluminium Ltd., 493 U.S. 331, 110 S. Ct. 661, 107 L. Ed. 2d 696 (1990); California v. Grace Brethren Church, 457 U.S. 393, 102 S. Ct. 2498, 73 L. Ed. 2d 93 (1982); Coleman v. Campbell County Library Bd. of Trustees, 901 F. Supp. 2d 925 (E.D. Ky. 2012).

[FN4] Moe v. Confederated Salish and Kootenai Tribes of Flathead Reservation, 425 U.S. 463, 96 S. Ct. 1634, 48 L. Ed. 2d 96 (1976).

[FN5] Hillsborough Tp., Somerset County, N.J., v. Cromwell, 326 U.S. 620, 66 S. Ct. 445, 90 L. Ed. 358 (1946); Board of Com'rs of Pawnee County, Okl. v. U.S., 139 F.2d 248 (C.C.A. 10th Cir. 1943).

[FN6] § 111.

[FN7] ANR Pipeline Co. v. Louisiana Tax Com'n, 646 F.3d 940 (5th Cir. 2011).

[FN8] California v. Grace Brethren Church, 457 U.S. 393, 102 S. Ct. 2498, 73 L. Ed. 2d 93 (1982).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 112

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
C. Governmental Acts and Agencies
5. Taxation; Licensing Taxes
c. Federal Court Cases Involving State Tax Litigation

[Topic Summary Correlation Table References](#)

§ 113. Standard applicable to state remedy

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑81, 213.1

West's Key Number Digest, [Federal Courts](#) 🔑26

A.L.R. Library

[What Constitutes Plain, Speedy, and Efficient State Remedy Under Tax Injunction Act \(28 U.S.C.A. s1341\), Prohibiting Federal District Courts from Interfering with Assessment, Levy, or Collection of State Business Taxes, 31 A.L.R. Fed. 2d 237](#)

The statutory provision for deference to plain, speedy, and efficient remedies available in state court requires the state court remedy to meet certain minimal procedural criteria; a state court remedy is plain, speedy, and efficient only if it provides the taxpayer with a full hearing and judicial determination at which the taxpayer may raise any constitutional objections to the tax.[1] The federal courts must narrowly construe the exception to the statute premised on a finding that the state court remedy is not plain, speedy, and efficient, in order to remain faithful to the congressional intent to limit drastically federal court interference with state tax systems.[2] A state remedy which provides for the payment of the tax and a suit for refund is a plain, speedy, and efficient remedy.[3] The availability in state court of an action for a declaratory judgment, to attack a state tax as being unconstitutional, is also a plain, speedy, and efficient remedy that bars federal court jurisdiction.[4] The plaintiff's inability to pay the tax and thus invoke the refund remedy does not make the state remedy inefficient,[5] nor does the likelihood of losing a challenge in state court based on prior decisions make that remedy any less "plain, speedy and efficient" under the Tax Injunction Act.[6]

The availability in state court of an action for refund of taxes is a plain, speedy, and efficient remedy which will bar the taxpayer's declaratory judgment suit brought in federal court[7] even if the refund procedure under state law commonly requires years to complete the remedy.[8] The availability of an administrative review of a state tax matter, followed by subsequent judicial review in state court of the administrative decision, constitutes a plain, speedy, and efficient remedy[9] even if the taxpayer might be required to prepay or post bond for the amount of the disputed assessment as a prerequisite to seeking judicial review.[10]

Caution:

Even in cases where the federal prohibition does not apply for lack of an adequate state court remedy, the principle of comity underlying the statute favors a stringent standard of justiciability in cases where the plaintiff seeks declaratory relief that threatens to interfere with state taxes.^[11]

[FN1] *Rosewell v. LaSalle Nat. Bank*, 450 U.S. 503, 101 S. Ct. 1221, 67 L. Ed. 2d 464 (1981).

[FN2] *California v. Grace Brethren Church*, 457 U.S. 393, 102 S. Ct. 2498, 73 L. Ed. 2d 93 (1982).

[FN3] *Aluminum Co. of America v. Department of Treasury of State of Mich.*, 522 F.2d 1120 (6th Cir. 1975).

[FN4] *Tully v. Griffin, Inc.*, 429 U.S. 68, 97 S. Ct. 219, 50 L. Ed. 2d 227 (1976).

[FN5] *Redding Ford v. California State Bd. of Equalization*, 722 F.2d 496 (9th Cir. 1983); *Wood v. Sergeant*, 694 F.2d 1159 (9th Cir. 1982).

[FN6] *Fernebok v. District of Columbia*, 534 F. Supp. 2d 25 (D.D.C. 2008).

[FN7] *California v. Grace Brethren Church*, 457 U.S. 393, 102 S. Ct. 2498, 73 L. Ed. 2d 93 (1982).

[FN8] *Rosewell v. LaSalle Nat. Bank*, 450 U.S. 503, 101 S. Ct. 1221, 67 L. Ed. 2d 464 (1981).

[FN9] *Lake Lansing Special Assessment Protest Ass'n v. Ingham County Bd. of Com'rs*, 488 F. Supp. 767 (W.D. Mich. 1980); *Delaware, L. & W. R. Co. v. Kingsley*, 189 F. Supp. 39 (D.N.J. 1960).

[FN10] *Scallop Corp. v. Tully*, 546 F. Supp. 745 (N.D. N.Y. 1982).

[FN11] *Alcan Aluminium Ltd. v. Department of Revenue of State of Or.*, 724 F.2d 1294 (7th Cir. 1984).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 113

END OF DOCUMENT


American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters

[Topic Summary Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  [81](#), [85](#), [91](#) to [96](#), [99](#), [112](#), [125](#), [126](#), [141](#) to [149](#), [161](#) to [172](#), [181](#) to [189](#), [211](#), [241](#), [242](#), [244](#)


A.L.R. Library

A.L.R. Index, Automobile Insurance

A.L.R. Index, Contracts

A.L.R. Index, Declaratory Judgments

A.L.R. Index, Uniform Declaratory Judgments Act

West's A.L.R. Digest, Declaratory Judgments  [81](#), [85](#), [91](#) to [96](#), [99](#), [112](#), [125](#), [126](#), [141](#) to [149](#), [161](#) to [172](#), [181](#) to [189](#), [211](#), [241](#), [242](#), [244](#)

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS III D REF

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
1. Contracts
a. Availability of Declaratory Judgment Generally

[Topic Summary Correlation Table References](#)

§ 114. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  141 to 149

Forms

[Am. Jur. Pleading and Practice Forms, Declaratory Judgments § 14](#) (Complaint, petition, or declaration—To determine rights and obligations of parties under commodities contract)

The Uniform Declaratory Judgments Act provides that any person interested under a written contract or other writing constituting a contract, or whose rights, status, or other legal relations are affected by a contract, may have determined any question of construction or validity arising under the contract and obtain a declaration of rights, status, or other legal relations thereunder.[1] Although some particular state laws providing for declaratory judgment, including the federal statute, contain no specific provision referring to contract rights,[2] declaratory judgments may be rendered with regard to questions arising under contracts.[3]

Declaratory judgments may be rendered for the purpose of determining the existence[4] and validity[5] of contracts. A party may initiate a declaratory judgment action to challenge the enforceability of a covenant in a contract,[6] or challenge the validity of a contractual obligation to arbitrate disputes,[7] as may an employee to test the enforceability of a noncompetition covenant in his or her employment contract.[8]

[FN1] Unif. Declaratory Judgments Act § 2.

[FN2] 28 U.S.C.A. § 2201.

[FN3] *Society of American Foresters v. Renewable Natural Resources Foundation*, 114 Md. App. 224, 689 A.2d 662 (1997); *Sahli v. Bull HN Information Systems, Inc.*, 437 Mass. 696, 774 N.E.2d 1085 (2002); *Cotton v. Brow*, 903 P.2d 530 (Wyo. 1995).

[FN4] *Corporation of America v. Durham Mut. Water Co.*, 50 Cal. App. 2d 337, 123 P.2d 81 (3d Dist. 1942) (declaring existence of oral contract).

[FN5] *Black & Veatch Corp. v. Modesto Irrigation Dist.*, 827 F. Supp. 2d 1130, 75 U.C.C. Rep. Serv. 2d 905 (E.D. Cal. 2011) (applying California law); *Lawley v. Northam*, 2011 WL 6013279 (D. Md. 2011); *Bollner v. Plastics Solutions of Texas, Inc.*, 270 S.W.3d 157 (Tex. App. El Paso 2008).

[FN6] *Hopper v. All Pet Animal Clinic, Inc.*, 861 P.2d 531 (Wyo. 1993).

[FN7] *Allred v. Educators Mut. Ins. Ass'n of Utah*, 909 P.2d 1263 (Utah 1996).

[FN8] *Huntington Eye Associates, Inc. v. LoCascio*, 210 W. Va. 76, 553 S.E.2d 773 (2001).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 114

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
1. Contracts
a. Availability of Declaratory Judgment Generally

[Topic Summary Correlation Table References](#)

§ 115. Limitations on availability

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  141 to 149

There are certain conditions under which the courts will refuse to render declaratory judgments with reference to contracts and the rights growing out of them, such as where a contract is unambiguous.[1] A declaratory judgment will not be granted where there is no justiciable controversy[2] or where the judgment, if rendered, would not terminate the controversy,[3] or the matter is moot.[4]

In a declaratory judgment action for the construction of a contract, a court will not undertake to make a contract for the parties,[5] but upon the determination that a contract exists between the parties, the court has the power to construe the parties' rights with respect to that contract.[6] A declaratory action at law is not appropriate for the seeking of the reformation of a written agreement.[7]

[FN1] *Farmers Elevator Co. of Sterling v. First Nat. Bank of Fleming*, 176 Colo. 168, 489 P.2d 318 (1971); *Von Seggern v. 310 West 49th St., Inc.*, 631 S.W.2d 877 (Mo. Ct. App. W.D. 1982).

[FN2] *Baillis v. Ross*, 2012-Ohio-705, 2012 WL 589557 (Ohio Ct. App. 8th Dist. Cuyahoga County 2012); *Crimson Exploration, Inc. v. Intermarket Management, LLC*, 341 S.W.3d 432 (Tex. App. Houston 1st Dist. 2010).

[FN3] *Lorillard Tobacco Co. v. American Legacy Foundation*, 903 A.2d 728 (Del. 2006); *Skowron v. Skowron*, 259 Wis. 17, 47 N.W.2d 326 (1951).

[FN4] *Kaye v. Personal Injury Funding III, LP*, 733 F. Supp. 2d 1345 (S.D. Fla. 2010); *Capitol Infrastructure, LLC v. Plaza Midtown Residential Condominium Ass'n, Inc.*, 306 Ga. App. 794, 702 S.E.2d 910 (2010), cert. denied, (Apr. 18, 2011); *Williams v. International Offshore Services, LLC*, 106 So. 3d 212 (La. Ct. App. 1st Cir. 2012), writ denied, 109 So. 3d 367 (La. 2013).

[FN5] Schull Const. Co. v. Koenig, 80 S.D. 224, 121 N.W.2d 559 (1963).

[FN6] Ken Leahy Const., Inc. v. Cascade General, Inc., 329 Or. 566, 994 P.2d 112 (1999).

[FN7] Dulles Corner Properties II Ltd. Partnership v. Smith, 246 Va. 153, 431 S.E.2d 309 (1993).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 115

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
1. Contracts
a. Availability of Declaratory Judgment Generally

[Topic Summary Correlation Table References](#)

§ 116. Construction of contracts

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  141, 142

Generally, declaratory judgments are appropriately rendered to interpret or construe contracts and declare their effect,[1] to determine whether there has been performance or breach,[2] and to determine whether a contract is subsisting or has terminated.[3]

A contract may be construed or its validity determined before a breach occurs[4] unless the dispute requires an interpretation based on facts not yet determinable.[5]

[FN1] *Black & Veatch Corp. v. Modesto Irrigation Dist.*, 827 F. Supp. 2d 1130, 75 U.C.C. Rep. Serv. 2d 905 (E.D. Cal. 2011); *Mid-Century Ins. Co. v. Estate of Morris ex rel. Morris*, 966 N.E.2d 681 (Ind. Ct. App. 2012), transfer denied, 973 N.E.2d 2 (Ind. 2012).

[FN2] *Great Lakes Gas Transmission Ltd. Partnership v. Essar Steel Minnesota, LLC*, 871 F. Supp. 2d 843 (D. Minn. 2012) (declaration as to whether a party's performance had been excused); *Jameson v. State Farm Mut. Auto. Ins. Co.*, 871 F. Supp. 2d 862 (W.D. Mo. 2012); *Gavin v. Landfair Realty Corp.*, 13 Cal. 2d 56, 87 P.2d 1012 (1939); *Kentucky Lumber & Millwork Co. v. George H. Rommell Co.*, 257 Ky. 371, 78 S.W.2d 52 (1934).

[FN3] *De Haviland v. Warner Bros. Pictures*, 67 Cal. App. 2d 225, 153 P.2d 983 (2d Dist. 1944); *Groves v. McDonald*, 223 N.C. 150, 25 S.E.2d 387 (1943).

[FN4] *Maytag Corp. v. International Union, United Auto., Aerospace & Agricultural Implement Workers of America*, 687 F.3d 1076 (8th Cir. 2012); *Commercial Union Ins. Co. v. Porter Hayden Co.*, 116 Md. App. 605, 698 A.2d 1167 (1997).

[FN5] *McDonald's Corp. v. Rocky Mountain McDonald's, Inc.*, 42 Colo. App. 143, 590 P.2d 519 (App.

1979).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 116

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
1. Contracts
a. Availability of Declaratory Judgment Generally

[Topic Summary Correlation Table References](#)

§ 117. Subject matter of contracts as to which relief granted

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  141 to 149

Declaratory judgments may be granted in cases involving many different types of contracts, including:

- contracts of sale[1]
- contracts to furnish gas, water, and power[2]
- contracts to erect or repair buildings[3]
- contracts involving stocks and stockholders[4]
- indemnification agreements[5]
- lease or service agreements[6]
- interconnection agreements between telecommunications carriers[7]
- arbitration agreements[8]
- labor contracts[9]

[FN1] *Texas Co. v. Todd*, 19 Cal. App. 2d 174, 64 P.2d 1180 (3d Dist. 1937); *Milani v. Palm Beach County*, 973 So. 2d 1222 (Fla. 4th DCA 2008).

[FN2] *PacifiCorp v. Public Utility Dist. No. 2 of Grant County*, 780 F. Supp. 2d 1133 (D. Or. 2011); *Florida Power Corp. v. City of Tallahassee*, 154 Fla. 638, 18 So. 2d 671 (1944).

[FN3] *Garland v. AAA Builders, Inc.*, 287 Ala. 616, 254 So. 2d 318 (1971); *Trustees of Tufts College v. Volpe Const. Co.*, 358 Mass. 331, 264 N.E.2d 676, 44 A.L.R.3d 1272 (1970); *Doyle & Russell, Inc. v. Roanoke Hospital Ass'n*, 213 Va. 489, 193 S.E.2d 662 (1973).

[FN4] *Backus v. Howard W. Backus Towing, Inc.*, 391 So. 2d 378 (Fla. 3d DCA 1980); *Kelly v. Edward A. Kelly & Sons, Inc.*, 296 So. 2d 559 (Fla. 3d DCA 1974).

[FN5] *Admiral Ins. Co. v. Little Big Inch Pipeline Co., Inc.*, 523 F. Supp. 2d 524 (W.D. Tex. 2007).

Declaratory judgments in the context of insurance, generally, see §§ 126 to 150.

[FN6] *Newcal Industries, Inc. v. Ikon Office Solution*, 513 F.3d 1038 (9th Cir. 2008).

[FN7] *Southwestern Bell Telephone Co. v. Fitch*, 643 F. Supp. 2d 902 (S.D. Tex. 2009).

[FN8] §§ 119 to 121.

[FN9] §§ 122 to 125.

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 117

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
1. Contracts
a. Availability of Declaratory Judgment Generally

[Topic Summary Correlation Table References](#)

§ 118. Oral contracts

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  142, 143.1

While statutory schemes providing for declaratory judgments may specifically refer to written contracts, it is generally held that actions are not limited to the interpretation of written instruments^[1] and that judgments may be granted declaring the existence of an oral contract^[2] or the rights of the parties thereunder.^[3] However, in some jurisdictions, declaratory judgments may be granted only in respect to written contracts.^[4]

[FN1] *In re Dahl's Estate*, 196 Or. 249, 248 P.2d 700, 32 A.L.R.2d 965 (1952).

[FN2] *Zab, Inc. v. Berenergy Corp.*, 136 P.3d 252 (Colo. 2006).

[FN3] *Zab, Inc. v. Berenergy Corp.*, 136 P.3d 252 (Colo. 2006); *Penley v. Penley*, 314 N.C. 1, 332 S.E.2d 51 (1985); *Lorenze v. Church*, 172 W. Va. 369, 305 S.E.2d 326 (1983).

[FN4] *Superior Dairy v. Stark County Milk Producers' Ass'n*, 89 Ohio App. 26, 45 Ohio Op. 326, 100 N.E.2d 695 (5th Dist. Stark County 1950).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 118

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
1. Contracts
b. Arbitration Agreements and Provisions

[Topic Summary Correlation Table References](#)

§ 119. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  144

A.L.R. Library

[Availability and scope of declaratory judgment actions in determining rights of parties, or powers and exercise thereof by arbitrators, under arbitration agreements, 12 A.L.R.3d 854](#)

A declaratory judgment may be considered as to matters arising from an arbitration agreement or clause in a contract.[1] Thus, declaratory relief may be available to secure a determination as to whether a matter in dispute comes within the scope of an arbitration agreement[2] or a state arbitration code,[3] to determine the qualifications of arbitrators[4] and the extent of arbitrators' powers[5] and in connection with franchise agreements.[6] A court may entertain a declaratory judgment action to clarify an arbitration award.[7]

Observation:

Normally, where the parties to a contract have agreed to resolve disputes through arbitration, a declaratory judgment should not be sought until after the arbitrator's decision has been rendered.[8] However, where the dispute involves a question of law that is outside the authority of the arbitrator, proper resolution is made by way of declaratory judgment.[9]

[FN1] *Camp v. Columbus*, 252 Ga. 120, 311 S.E.2d 834 (1984); *Security Mut. Cas. Co. v. Harbor Ins. Co.*, 77 Ill. 2d 446, 34 Ill. Dec. 167, 397 N.E.2d 839 (1979).

[FN2] *Gruntal & Co., Inc. v. Steinberg*, 854 F. Supp. 324 (D.N.J. 1994), *aff'd*, 46 F.3d 1116 (3d Cir. 1994); *Morton v. Polivchak*, 931 So. 2d 935 (Fla. 2d DCA 2006).

[FN3] *Camp v. Columbus*, 252 Ga. 120, 311 S.E.2d 834 (1984); *Williamsport Area Community College*

v. Williamsport Area Community College Ed. Ass'n, 58 Pa. Commw. 256, 427 A.2d 754 (1981).

[FN4] Kodiak Oil Field Haulers, Inc. v. Teamsters Union Local No. 959, 611 F.2d 1286 (9th Cir. 1980).

[FN5] Allstate Ins. Co. v. Elkins, 63 Ill. App. 3d 62, 21 Ill. Dec. 66, 381 N.E.2d 1 (1st Dist. 1978), judgment aff'd, 77 Ill. 2d 384, 33 Ill. Dec. 139, 396 N.E.2d 528 (1979).

[FN6] Bell v. Associated Independents, Inc., 143 So. 2d 904, 12 A.L.R.3d 847 (Fla. 2d DCA 1962); City of Paducah v. Kentucky Utilities Co., 264 S.W.2d 848 (Ky. 1953).

[FN7] International Broth. of Elec. Workers, Local Union 1547 v. City of Ketchikan, 805 P.2d 340 (Alaska 1991).

[FN8] Liberty Mut. Ins. Co. v. Duray, 5 Ill. App. 3d 187, 283 N.E.2d 58 (1st Dist. 1972).

[FN9] Allstate Ins. Co. v. Elkins, 63 Ill. App. 3d 62, 21 Ill. Dec. 66, 381 N.E.2d 1 (1st Dist. 1978), judgment aff'd, 77 Ill. 2d 384, 33 Ill. Dec. 139, 396 N.E.2d 528 (1979).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 119

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
1. Contracts
b. Arbitration Agreements and Provisions

[Topic Summary Correlation Table References](#)

§ 120. Limitations as to availability of declaratory judgment

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  144

While a party may be entitled to a declaratory judgment as to whether there is an agreement to arbitrate even though, under such an agreement, that party would not have a right to seek court action compelling arbitration,[1] where a contract provides for arbitration of disputes arising thereunder, a party to the contract may not, without having sought arbitration, seek a declaratory judgment as to the party's rights under the contract.[2]

Caution:

Arbitration statutes may provide an exclusive statutory remedy as to specified matters, precluding the availability of a declaratory judgment.[3]

Declaratory judgment may be denied where the question involved is already the subject of a pending arbitration proceeding,[4] where the court is not in a position to determine the issue presented,[5] where the question is not ripe for review,[6] or where the question involved has been rendered moot.[7]

[FN1] *Downing v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 725 F.2d 192 (2d Cir. 1984).

[FN2] *Lichter v. Goss*, 163 F.2d 1000 (C.C.A. 7th Cir. 1947); *J.M. Huber Corp. v. Main-Erbauer, Inc.*, 493 A.2d 1048 (Me. 1985).

[FN3] *Galion v. Am. Fedn. of State, Cty. & Mun. Emp., Ohio Council 8, AFL-CIO, Local 2243*, 71 Ohio St. 3d 620, 1995-Ohio-197, 646 N.E.2d 813 (1995); *Simon v. Teton Bd. of Realtors*, 4 P.3d 197 (Wyo. 2000).

[FN4] *Harleysville Mut. Ins. Co. v. Philadelphia Transp. Co.*, 435 Pa. 316, 255 A.2d 516 (1969).

[FN5] *New York State Ass'n for Retarded Children, Inc. v. Carey*, 456 F. Supp. 85 (E.D. N.Y. 1978).

[FN6] *Minnick v. Clearwire US, LLC*, 683 F. Supp. 2d 1179 (W.D. Wash. 2010); *Ex parte Johnson*, 993 So. 2d 875 (Ala. 2008).

[FN7] *Kodiak Oil Field Haulers, Inc. v. Teamsters Union Local No. 959*, 611 F.2d 1286 (9th Cir. 1980); *Kaye v. Personal Injury Funding III, LP*, 733 F. Supp. 2d 1345 (S.D. Fla. 2010).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 120

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
1. Contracts
b. Arbitration Agreements and Provisions

[Topic Summary Correlation Table References](#)

§ 121. Actions in federal courts

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  144

If an insurance policy provides for arbitration of disputes after denial of a claim, the federal court will leave the parties to the arbitration remedy instead of taking on the declaratory judgment action.[1] An arbitration proceeding as provided in an insurance policy is a fully adequate alternative remedy which would be duplicative of any declaratory judgment proceeding in federal court.[2] In order to enforce the state's public policy favoring arbitration when the parties have contracted therefor, the court may stay the proceedings in the declaratory judgment action brought by the insurer until the disposition of arbitration proceedings.[3]

Observation:

A federal court may have jurisdiction in a declaratory judgment action brought by an insurer to determine the enforceability of a policy provision even though the ultimate resolution of the dispute would come only in an arbitration proceeding to determine the insured's damages.[4]

Where the federal court has jurisdiction to consider a declaratory judgment in a matter subject to arbitration, judicial review of the arbitrator's decision is limited to a determination of whether the decision is a plausible interpretation of the arbitration agreement.[5]

[FN1] *Government Emp. Ins. Co. v. Keystone Ins. Co.*, 408 F. Supp. 1185 (E.D. Pa. 1975); *State Farm Mut. Ins. Co. v. Shour*, 407 F. Supp. 787 (E.D. Pa. 1975).

[FN2] *Smith v. Metropolitan Property and Liability Ins. Co.*, 629 F.2d 757 (2d Cir. 1980).

[FN3] *Farm Family Mut. Ins. Co. v. Blevins*, 572 F. Supp. 397 (D. Del. 1983).

[FN4] *West American Ins. Co. v. Park*, 933 F.2d 1236 (3d Cir. 1991).

[FN5] [Orion Pictures Corp. v. Writers Guild of America, West, Inc.](#), 946 F.2d 722 (9th Cir. 1991).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 121

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
1. Contracts
c. Labor and Employment Contracts

[Topic Summary Correlation Table References](#)

§ 122. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  99, 142, 147

The validity, construction, and effect of a labor contract, or collective bargaining agreement, may be determined in an action for declaratory judgment^[1] as may the question of a statute's applicability to a collective bargaining agreement.^[2] The matter must, however, be justiciable,^[3] and a declaratory judgment may be denied if the matter is moot, such as where an employer reinstates a worker after the union representatives seek a declaratory judgment as to the employer's right to fire the worker.^[4] Whether there is jurisdiction in the particular case will depend on the applicable provisions of law and the claims raised.^[5]

Under the statutory provision that suits for violation of a contract between an employer and a labor organization in an industry affecting commerce may be brought in any federal district court having jurisdiction of the parties,^[6] a federal district court may entertain an action for a declaratory judgment construing the parties' collective bargaining agreement^[7] and determining whether a party's past actions have been in violation of that agreement.^[8]

[FN1] *Colman v. School Committee of Swansea*, 6 Mass. App. Ct. 912, 378 N.E.2d 1016 (1978); *Peters v. Board of Ed. of Reorganized School Dist. No. 5 of St. Charles County*, 506 S.W.2d 429 (Mo. 1974); *State ex rel. Graham v. Northshore School Dist. No. 417*, 99 Wash. 2d 232, 662 P.2d 38, 10 Ed. Law Rep. 846 (1983).

[FN2] *Univ. of Toledo Chapter, Am. Assn. of Univ. Professors v. Univ. of Toledo Bd. of Trustees*, 2012-Ohio-3618, 975 N.E.2d 531, 284 Ed. Law Rep. 1075 (Ohio Ct. App. 6th Dist. Lucas County 2012).

[FN3] *Wilson v. Transit Authority of City of Sacramento*, 199 Cal. App. 2d 716, 19 Cal. Rptr. 59 (3d Dist. 1962).

As to justiciability in declaratory actions, generally, see §§ 21 to 35.

[FN4] *Kodiak Oil Field Haulers, Inc. v. Teamsters Union Local No. 959*, 611 F.2d 1286 (9th Cir. 1980).

[FN5] *United Food & Commercial Workers Union, Local 1564 of New Mexico v. Albertson's, Inc.*, 207 F.3d 1193 (10th Cir. 2000).

[FN6] 29 U.S.C.A. § 185(a).

[FN7] *Pittsburgh Mack Sales & Service, Inc. v. International Union of Operating Engineers, Local Union No. 66*, 580 F.3d 185 (3d Cir. 2009); *Retail Clerks Union Local 1222, AFL-CIO v. Alfred M. Lewis, Inc.*, 327 F.2d 442 (9th Cir. 1964).

As to labor contracts, generally, see *Am. Jur. 2d, Labor and Labor Relations* §§ 2208 to 2475.

[FN8] *Verizon New England, Inc. v. International Broth. of Elec. Workers, Local No. 2322*, 651 F.3d 176 (1st Cir. 2011).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 122

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
1. Contracts
c. Labor and Employment Contracts

[Topic Summary Correlation Table References](#)

§ 123. Employment and personal service contracts

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 145

Declaratory judgments are available to determine actual controversies arising under contracts of employment or contracts for personal services,[1] including contracts for the services of attorneys.[2] Declaratory relief may be denied where the employee has an adequate remedy at law for damages.[3]

So long as an actual controversy exists,[4] a declaratory judgment action is a proper way for a restricted employee to test the enforceability of a noncompetition covenant in his or her employment contract,[5] including a determination as to the validity of the covenant.[6]

[FN1] *Ex parte Jim Dandy Co.*, 286 Ala. 295, 239 So. 2d 545 (1970); *Columbia Pictures Corp. v. De Toth*, 26 Cal. 2d 753, 161 P.2d 217, 162 A.L.R. 747 (1945).

[FN2] *Tisdell v. Board of County Com'rs of Bent County*, 621 P.2d 1357 (Colo. 1980); *Teasdale v. Mayne*, 166 S.W.2d 316 (Mo. Ct. App. 1942).

[FN3] *Goldberg v. Valve Corp. of America*, 89 Ill. App. 2d 383, 233 N.E.2d 85 (1st Dist. 1967).

[FN4] *Mintz v. Mark Bartelstein and Associates Inc.*, 906 F. Supp. 2d 1017 (C.D. Cal. 2012); *McKenna v. PSS World Medical, Inc.*, 2009 WL 2007116 (W.D. Pa. 2009); *Chauvin v. Wellcheck, Inc.*, 938 So. 2d 114 (La. Ct. App. 1st Cir. 2006).

[FN5] *Ford v. Cardiovascular Specialists, P.C.*, 71 A.D.3d 1429, 896 N.Y.S.2d 776 (4th Dep't 2010); *Huntington Eye Associates, Inc. v. LoCascio*, 210 W. Va. 76, 553 S.E.2d 773 (2001); *Hopper v. All Pet Animal Clinic, Inc.*, 861 P.2d 531 (Wyo. 1993).

[FN6] *Watkins v. Avnet, Inc.*, 122 Ga. App. 474, 177 S.E.2d 582 (1970); *Bahleda v. Hankison Corp.*,

228 Pa. Super. 153, 323 A.2d 121 (1974); *Torbett v. Wheeling Dollar Sav. & Trust Co.*, 173 W. Va. 210, 314 S.E.2d 166 (1983).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 123

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
1. Contracts
c. Labor and Employment Contracts

[Topic Summary Correlation Table References](#)

§ 124. Seniority rights

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  [99](#), [142](#), [147](#)

Declaratory judgment actions may be maintained to determine the seniority rights of employees under a labor contract,^[1] and such actions may be brought by employers, as well as employees.^[2]

[FN1] *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 66 S. Ct. 1105, 90 L. Ed. 1230, 167 A.L.R. 110 (1946); *Lynchburg Foundry Co. v. United Steelworkers of America*, AFL-CIO, 409 F. Supp. 773 (W.D. Va. 1976).

[FN2] *Oil Workers Intern. Union, Local No. 463 v. Texoma Natural Gas Co.*, 146 F.2d 62 (C.C.A. 5th Cir. 1944); *Wooldridge v. Denver & R. G. W. R. Co.*, 118 Colo. 25, 191 P.2d 882 (1948).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 124

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
1. Contracts
c. Labor and Employment Contracts

[Topic Summary Correlation Table References](#)

§ 125. School personnel

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  99, 142, 147

Disputes involving the contracts of school personnel may be the basis for a declaratory judgment action,[1] considering issues such as the expiration date of employment contracts,[2] entitlement to reemployment under a continuing service contract,[3] a dismissed teacher's rights to reinstatement,[4] disputes over an employee's proper salary schedule classification,[5] and the propriety of an employee's assigned duties under his or her contract.[6]

Uncertainty as to underlying contingencies may preclude the granting of a declaratory judgment,[7] and a declaratory judgment action is not appropriate where such a judgment by the court would not terminate uncertainty or the controversy between the teacher and any of the adverse parties.[8] Also, a declaratory judgment action brought by a teacher against a city's board of education, alleging that specific disciplinary information in the teacher's personnel file is not subject to disclosure to a newspaper under a state's open records act, does not involve a justiciable controversy where both the teacher and the board have consistently taken the position that the information sought by the newspaper is exempt from disclosure under the act.[9]

[FN1] *Weary v. School Dist. No. 189, East St. Louis*, 20 Ill. App. 3d 37, 312 N.E.2d 764 (5th Dist. 1974); *Gere v. Council Bluffs Community School Dist.*, 334 N.W.2d 307, 11 Ed. Law Rep. 629 (Iowa 1983).

[FN2] *Colman v. School Committee of Swansea*, 6 Mass. App. Ct. 912, 378 N.E.2d 1016 (1978).

[FN3] *State ex rel. Stec v. Bd. of Ed. of Lorain City School Dist.*, 49 Ohio App. 2d 101, 3 Ohio Op. 3d 160, 359 N.E.2d 445 (9th Dist. Lorain County 1974).

[FN4] *Black v. School Committee of Malden*, 365 Mass. 197, 310 N.E.2d 330 (1974).

[FN5] Cohn v. Board of Ed. of Waukegan Tp. High School Dist. No. 119, Lake County, 118 Ill. App. 2d 453, 254 N.E.2d 803 (2d Dist. 1970).

[FN6] Gere v. Council Bluffs Community School Dist., 334 N.W.2d 307, 11 Ed. Law Rep. 629 (Iowa 1983).

[FN7] State ex rel. Graham v. Northshore School Dist. No. 417, 99 Wash. 2d 232, 662 P.2d 38, 10 Ed. Law Rep. 846 (1983).

[FN8] Miller v. Weaver, 2003 UT 12, 66 P.3d 592, 175 Ed. Law Rep. 334 (Utah 2003).

[FN9] Fenn v. Ozark City Schools Bd. of Educ., 9 So. 3d 484, 245 Ed. Law Rep. 531 (Ala. 2008).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 125

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
2. Insurance
a. Availability of Declaratory Judgment in Matters Regarding Insurance
(1) In General

[Topic Summary Correlation Table References](#)

§ 126. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  161 to 171

Forms

[Am. Jur. Pleading and Practice Forms, Declaratory Judgments §§ 28, 29](#) (Complaint, petition, or declaration—To determine duty of insurer to defend insured)

[Am. Jur. Pleading and Practice Forms, Declaratory Judgments § 32](#) (Complaint in federal court—To determine rights under insurance policy and for interpleader)

[Am. Jur. Pleading and Practice Forms, Insurance § 194](#) (Complaint, petition, or declaration—For declaratory judgment—By insurer—To determine whether delay of insured in reporting accident excused liability insurer's duty to defendant pending action)

The remedy of declaratory judgment is a proper one for the determination of questions arising from the construction and operation of insurance policies with regard to the rights and liabilities of the parties thereunder irrespective of whether such policies involve accident, fire, health, life, liability, or indemnity insurance.[1]

A declaratory judgment may be denied in cases involving insurance where the State has no declaratory judgment statute.[2] While a declaratory judgment statute which contains no reference to contracts may not authorize a declaratory judgment involving an insurance contract,[3] where the declaratory judgment statute applies to any written contract or other writings constituting a contract, insurance contracts come within the purview of the statute.[4] The declaratory judgment action may be a convenient method of determining controversies between insurance companies themselves, either by direct actions or by joinder or intervention.[5] However, a declaratory judgment is not available where the judgment cannot guide and protect the petitioner with regard to some future acts,[6] such as where the insurance company has already denied the claim.[7]

[FN1] Hartford Acc. & Indem. Co. v. Crider, 392 F. Supp. 162 (N.D. Ill. 1974); Spivey Co. v. Travelers Ins. Companies, 407 F. Supp. 916 (E.D. Pa. 1976); General Ins. Co. of America v. Whitmore, 235 Cal. App. 2d 670, 45 Cal. Rptr. 556 (2d Dist. 1965); Quintana v. Lujan, 540 P.2d 351 (Colo. App. 1975); Tindall v. Allstate Ins. Co., 472 So. 2d 1291 (Fla. 2d DCA 1985); Bituminous Cas. Corp. v. B & B Chemical Co., 179 So. 2d 125 (Fla. 3d DCA 1965); McAndrews v. Farm Bureau Mut. Ins. Co., 349 N.W.2d 117 (Iowa 1984); Aetna Cas. & Sur. Co. v. Brethren Mut. Ins. Co., 38 Md. App. 197, 379 A.2d 1234 (1977); Massachusetts Ass'n of Independent Ins. Agents & Brokers, Inc. v. Commissioner of Ins., 373 Mass. 290, 367 N.E.2d 796 (1977); Unsatisfied Claim and Judgment Fund Bd. v. Concord Ins. Co., 110 N.J. Super. 191, 264 A.2d 757 (Law Div. 1970); Hobson Const. Co., Inc. v. Great American Ins. Co., 71 N.C. App. 586, 322 S.E.2d 632 (1984); State Farm Mut. Auto. Ins. Co. v. Holcomb, 9 Ohio App. 3d 79, 458 N.E.2d 441 (9th Dist. Summit County 1983); State Farm Fire and Cas. Co. v. Reuter, 294 Or. 446, 657 P.2d 1231 (1983); Poling v. North American Life and Cas. Co., 593 P.2d 568 (Wyo. 1979).

[FN2] Sumrall v. Preferred Risk Mut. Ins. Co., 339 So. 2d 568 (Miss. 1976).

[FN3] Lumbermen's Mut. Cas. Co. v. Moses, 224 Ark. 67, 271 S.W.2d 780 (1954).

[FN4] Equity Mut. Ins. Co. v. Southern Ice Co., 232 Ark. 41, 334 S.W.2d 688 (1960).

[FN5] Mountain West Farm Bureau Mut. Ins. Co., Inc. v. Hallmark Ins. Co., 561 P.2d 706 (Wyo. 1977).

[FN6] Morgan v. Guaranty Nat. Companies, 268 Ga. 343, 489 S.E.2d 803 (1997).

[FN7] Atlanta Cas. Co. v. Fountain, 262 Ga. 16, 413 S.E.2d 450 (1992).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 126

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
2. Insurance
a. Availability of Declaratory Judgment in Matters Regarding Insurance
(1) In General

[Topic Summary Correlation Table References](#)

§ 127. Actions by insureds and beneficiaries

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  161, 166.1, 168

While the declaratory judgment action may be more frequently used by insurers, the insured and the beneficiaries under insurance policies may find the action to be convenient and advantageous; thus, a determination may be sought to enable an insured to establish the liability of an insurer under a liability policy^[1] or to determine and establish the interest of a beneficiary in a particular policy,^[2] including an action in particular circumstances by an injured party against a liability insurer before the insured tortfeasor's underlying liability has been determined.^[3] Thus, an insurer's refusal to admit or deny coverage without specifying a reason for the refusal afforded a sufficient basis for jurisdiction in a declaratory judgment action by an insured.^[4]

[FN1] *White v. National Union Fire Ins. Co. of Pittsburgh, Pa.*, 913 F.2d 165 (4th Cir. 1990); *Carney v. Village of Darien*, 60 F.3d 1273 (7th Cir. 1995); *Graham v. State Farm Mut. Auto. Ins. Co.*, 319 S.C. 69, 459 S.E.2d 844 (1995); *Standard Fire Ins. Co. v. Fraiman*, 514 S.W.2d 343 (Tex. Civ. App. Houston 14th Dist. 1974).

[FN2] *Equitable Life Assur. Soc. of U.S. v. Hemenover*, 100 Colo. 231, 67 P.2d 80, 110 A.L.R. 1270 (1937).

[FN3] *Richmond v. Hartford Underwriters Ins. Co.*, 126 Md. App. 166, 727 A.2d 968 (1999).

[FN4] *Perez v. State Auto. Ins. Ass'n*, 270 So. 2d 377 (Fla. 3d DCA 1972).

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
2. Insurance
a. Availability of Declaratory Judgment in Matters Regarding Insurance
(1) In General

[Topic Summary Correlation Table References](#)

§ 128. Policy coverage; language

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 161, 168

A.L.R. Library

[Insured's right to recover attorneys' fees incurred in declaratory judgment action to determine existence of coverage under liability policy, 87 A.L.R.3d 429](#)

Questions appropriate for a declaratory judgment include those concerning the coverage[1] or concerning the language in a policy.[2] The court's first step in a declaratory judgment action concerning insurance coverage is to determine the scope of the policy's coverage; after determining the scope, the court must examine the complaint in the underlying action to ascertain if it triggers coverage.[3]

Observation:

In a declaratory judgment action which presents the issue of coverage under the terms of an insurance policy, it is the function of the court to interpret the policy and decide whether or not there is coverage.[4] In particular instances, a court may have the discretion to abstain from entertaining a declaratory judgment as to an issue of insurance coverage.[5]

However, an insurer may not refuse to pay under its policy and then use the declaratory judgment procedure as a means of avoiding bad faith penalties.[6]

In addition to determining whether coverage exists under a particular policy,[7] particular issues of coverage that may be determined in an action for declaratory judgment include both primary and excess liability coverage[8] and whether an exclusion applies,[9] underinsured motorist coverage is included,[10] or the insured has a duty to defend[11] or a duty to indemnify.[12]

Observation:

Any consideration, in a declaratory judgment action concerning coverage under a liability insurance policy, of the insurer's duty to indemnify may have to be deferred until there has been an opportunity to examine the fully developed facts of the underlying action and to decide whether the insurance contract language requiring indemnification is met even though the allegations of the underlying complaint are sufficient to trigger the duty to defend.[13]

[FN1] *GEICO v. Fetisoff*, 958 F.2d 1137 (D.C. Cir. 1992); *Vignola v. Gilman*, 804 F. Supp. 2d 1072 (D. Nev. 2011) (under Nevada law); *National Sec. Fire & Cas. Co. v. Poskey*, 309 Ark. 206, 828 S.W.2d 836 (1992); *Roussos v. Allstate Ins. Co.*, 104 Md. App. 80, 655 A.2d 40 (1995).

[FN2] *Thattil v. Dominican Sisters of Charity of Presentation of Blessed Virgin, Inc.*, 415 Mass. 381, 613 N.E.2d 908 (1993).

[FN3] *General Acc. Ins. Co. of America v. Allen*, 547 Pa. 693, 692 A.2d 1089 (1997).

[FN4] *Lloyd E. Mitchell, Inc. v. Maryland Cas. Co.*, 324 Md. 44, 595 A.2d 469, 14 A.L.R.5th 1058 (1991).

[FN5] *National Union Fire Ins. Co. of Pittsburgh, Pa. v. Karp*, 108 F.3d 17 (2d Cir. 1997).

[FN6] *Morgan v. Guaranty Nat. Companies*, 268 Ga. 343, 489 S.E.2d 803 (1997).

[FN7] *North Star Mut. Ins. Co. v. Kneen*, 484 N.W.2d 908 (S.D. 1992); *Christian v. Sizemore*, 181 W. Va. 628, 383 S.E.2d 810 (1989).

State Farm Fire and Cas. Co. v. Finney, 244 Kan. 545, 770 P.2d 460 (1989); *Blackburn, Nickels & Smith, Inc. v. National Farmers Union Property & Cas. Co.*, 452 N.W.2d 319 (N.D. 1990).

[FN8] *E.R. Squibb & Sons, Inc. v. Lloyd's & Companies*, 241 F.3d 154, 48 Fed. R. Serv. 3d 1249 (2d Cir. 2001); *Sta-Rite Industries, Inc. v. Allstate Ins. Co.*, 96 F.3d 281, 36 Fed. R. Serv. 3d 150 (7th Cir. 1996).

[FN9] *Aetna Cas. & Sur. Co. v. Chicago Ins. Co.*, 994 F.2d 1254 (7th Cir. 1993).

[FN10] *Graham v. State Farm Mut. Auto. Ins. Co.*, 319 S.C. 69, 459 S.E.2d 844 (1995).

[FN11] *Boston Symphony Orchestra, Inc. v. Commercial Union Ins. Co.*, 406 Mass. 7, 545 N.E.2d 1156 (1989); *Midwest Medical Ins. Co. v. Doe*, 1999 ND 17, 589 N.W.2d 581 (N.D. 1999).

As to an actual case or controversy existing based on issue of whether there is a duty to defend, see § 132.

[FN12] *Budget Rent-A-Car, Inc. v. Higashiguchi*, 109 F.3d 1471 (9th Cir. 1997); *American States Ins. Co. v. Kearns*, 15 F.3d 142 (9th Cir. 1994).

[FN13] *Endre v. Niagara Fire Ins. Co.*, 675 A.2d 511 (Me. 1996).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 128

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
2. Insurance
a. Availability of Declaratory Judgment in Matters Regarding Insurance
(1) In General

[Topic Summary Correlation Table References](#)

§ 129. Determination of questions of fact

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 112, 161, 166.1, 171

In determining whether an insurer is liable under an insurance policy, a court has the power to determine questions of fact necessary or incidental to the declaration of legal relations.[1] A declaratory judgment may be maintained as to the liability or nonliability under an insurance policy even though factual determinations are necessary to make a declaration on the issue and even though no question of construction or validity of the policy is raised,[2] such as a declaratory judgment brought by one insurer against another insurer to determine which policy covers the injury to an alleged employee of the insured.[3] However, it may be the case that no justiciable controversy is presented where the dispute between the parties concerns undetermined questions of fact, for example, where the requested declaration would not change the legal status of the parties since such relation would depend on fact-findings yet to be made.[4]

In jurisdictions where declaratory judgments should not be rendered if there is a dispute as to facts, a declaratory judgment will not be rendered in an automobile insurance case where there is a dispute as to who owned the automobile at the time of the accident[5] or where the factual issues are more appropriately determined in a tort suit rather than the declaratory judgment action, such as where the extent of the liability of the insurer may depend on whether the insurer acted in bad faith.[6]

Observation:

A party does not necessarily have to establish that the relief sought could resolve all the issues between the parties to be entitled to declaratory relief.[7]

[FN1] *Stout v. Grain Dealers Mut. Ins. Co.*, 307 F.2d 521 (4th Cir. 1962); *Ohio Farmers Indem. Co. v. Chames*, 170 Ohio St. 209, 10 Ohio Op. 2d 164, 163 N.E.2d 367 (1959); *National Indem. Co. v. Smith-*

Gandy, Inc., 50 Wash. 2d 124, 309 P.2d 742 (1957).

[FN2] Southern Trust Ins. Co. v. Eason, 134 Ga. App. 827, 216 S.E.2d 667 (1975); Ohio Farmers Indem. Co. v. Chames, 170 Ohio St. 209, 10 Ohio Op. 2d 164, 163 N.E.2d 367 (1959).

[FN3] Farm Bureau Mut. Ins. Co. v. Farmers Mut. Auto. Ins. Co. of Madison, Wis., 360 S.W.2d 325 (Mo. Ct. App. 1962).

[FN4] Step-Saver Data Systems, Inc. v. Wyse Technology, 912 F.2d 643, 12 U.C.C. Rep. Serv. 2d 343 (3d Cir. 1990).

[FN5] State Farm Mut. Auto. Ins. Co. v. Semple, 407 Pa. 572, 180 A.2d 925 (1962).

[FN6] Tennessee Farmers Mut. Ins. Co. v. Hammond, 200 Tenn. 106, 290 S.W.2d 860 (1956).

[FN7] Ridley v. Guaranty Nat. Ins. Co., 286 Mont. 325, 951 P.2d 987 (1997), as modified on denial of reh'g, (Jan. 30, 1998).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 129

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
2. Insurance
a. Availability of Declaratory Judgment in Matters Regarding Insurance
(2) Requisite Nature of Controversy

Topic Summary Correlation Table References

§ 130. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 161 to 171

Forms

[Am. Jur. Pleading and Practice Forms, Declaratory Judgments § 32](#) (Complaint in federal court—To determine rights under insurance policy and for interpleader)

The general rule that declaratory judgments will be issued only where an actual or justiciable controversy exists applies to cases involving insurance policies and matters.[1] Generally, an insurer's action for a declaration that a liability policy does not cover the claims against its insured is a case of actual controversy sufficient to entertain the action for a declaratory judgment.[2] Alternatively, a case of actual controversy may arise when an insurance carrier seeks a declaratory judgment that it has a duty neither to defend nor indemnify its insured in a state court action that has not yet proceeded to judgment.[3]

A case of controversy may exist sufficient for a court to issue a declaratory judgment regarding the coverage of uninsured motorist insurance available to the insured even if the insured has not obtained a judgment against the tortfeasor since the issue is sufficiently definite and concrete.[4] There is an actual case and controversy where the language in the policy respecting limitations as to each claim is questioned in a declaratory judgment proceeding notwithstanding the absence of a determination of the insured's liability to separate parties.[5]

For purposes of deciding whether to hear a declaratory judgment claim, it is almost always the case that if a declaratory judgment will settle the controversy, then it will clarify the legal relations in issue; in an insurance case, the court's focus in deciding this factor must be on the ability of the federal declaratory judgment to resolve, once and finally, the question of the insurance indemnity obligation of the insurer.[6] Where liability of an insurer is contingent, courts determining whether an insurer's declaratory judgment action is ripe traditionally examine the practical likelihood that there will be some type of settlement or judgment against the insurer.[7]

Observation:

For a declaratory judgment coverage action involving an excess insurance policy to be ripe, it must be practically or reasonably likely that the insured's potential liability will reach into the excess coverage; absolute proof that the policies will be triggered is not required, and the worst case or highest estimate of damages may be used to ascertain whether or not a claim is justiciable against a particular excess insurer's policy.[8]

While the premature presentation of an issue may result in a declaratory judgment being denied for lack of an actual case or controversy,[9] as when an insurance company exercises its statutory and contractual rights to review a claim and has not made any determination as to its merits,[10] when there is a practical likelihood of conditions that will evoke questions as to the scope of liability coverage, an actual case and controversy is presented.[11]

A claim that merely involves an administrative matter may not constitute a specific case or controversy sufficient to support an action for declaratory judgment,[12] and a declaratory judgment is not appropriate where there is an unknown potential for liability to an insured and the declaratory judgment would not end the controversy between the parties,[13] or where another equally serviceable remedy is available to the insurer,[14] or where the issuance of a declaratory judgment would be, in effect, merely an advisory opinion.[15]

When an insurer seeking a declaratory judgment in a federal court is not a party to underlying simultaneous state court litigation, and the scope of the coverage or an obligation to defend are not before the state court, the use of a declaratory action will not increase the friction between the federal and state courts and improperly encroach on state jurisdiction and thus is a factor weighing in favor of exercising jurisdiction over the declaratory judgment action.[16]

[FN1] *Diamond Shamrock Corp. v. Lumbermens Mut. Cas. Co.*, 416 F.2d 707 (7th Cir. 1969); *Reagor v. Travelers Ins. Co.*, 92 Ill. App. 3d 99, 47 Ill. Dec. 507, 415 N.E.2d 512 (1st Dist. 1980); *Farm & City Ins. Co. v. Coover*, 225 N.W.2d 335 (Iowa 1975); *General Cas. Co. of Wis. v. Hines*, 261 Iowa 738, 156 N.W.2d 118 (1968); *Central Sur. & Ins. Corp. v. Anderson*, 445 S.W.2d 514 (Tex. 1969); *Mountain West Farm Bureau Mut. Ins. Co., Inc. v. Hallmark Ins. Co.*, 561 P.2d 706 (Wyo. 1977).

As to justiciability in declaratory actions, generally, see §§ 21 to 35.

[FN2] *Nautilus Ins. Co. v. Winchester Homes, Inc.*, 15 F.3d 371 (4th Cir. 1994).

[FN3] *American States Ins. Co. v. Bailey*, 133 F.3d 363 (5th Cir. 1998).

[FN4] *White v. National Union Fire Ins. Co. of Pittsburgh, Pa.*, 913 F.2d 165 (4th Cir. 1990).

[FN5] *Kunkel v. Continental Cas. Co.*, 866 F.2d 1269 (10th Cir. 1989).

[FN6] *Pennsylvania Nat. Mut. Cas. Ins. Co. v. HVAC, Inc.*, 679 F. Supp. 2d 863 (E.D. Tenn. 2009).

[FN7] *Federal Ins. Co. v. SafeNet, Inc.*, 758 F. Supp. 2d 251 (S.D. N.Y. 2010).

[FN8] *Liberty Mutual Ins. Co. v. Lone Star Industries, Inc.*, 290 Conn. 767, 967 A.2d 1 (2009).

[FN9] *Atlanta Gas Light Co. v. Aetna Cas. and Sur. Co.*, 68 F.3d 409 (11th Cir. 1995); *Midwest Medical Ins. Co. v. Doe*, 1999 ND 17, 589 N.W.2d 581 (N.D. 1999).

[FN10] *Moynihhan v. West Coast Life Ins., Co.*, 607 F. Supp. 2d 1336 (S.D. Fla. 2009).

[FN11] *E.R. Squibb & Sons, Inc. v. Lloyd's & Companies*, 241 F.3d 154, 48 Fed. R. Serv. 3d 1249 (2d Cir. 2001).

[FN12] *Sentry Ins. v. Majeed*, 260 Ga. 203, 391 S.E.2d 649 (1990).

[FN13] *American Family Mut. Ins. Co. v. Hadley*, 264 Neb. 435, 648 N.W.2d 769 (2002).

[FN14] *Farm Bureau Ins. Co. v. Witte*, 256 Neb. 919, 594 N.W.2d 574 (1999).

[FN15] *Northfield Ins. Co. v. Montana Ass'n of Counties*, 2000 MT 256, 301 Mont. 472, 10 P.3d 813 (2000).

[FN16] *Grange Mut. Cas. Co. v. Safeco Ins. Co. of America*, 565 F. Supp. 2d 779 (E.D. Ky. 2008).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 130

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
2. Insurance
a. Availability of Declaratory Judgment in Matters Regarding Insurance
(2) Requisite Nature of Controversy

[Topic Summary Correlation Table References](#)

§ 131. Scope of coverage or liability

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  161, 168

In the case of liability policies, a dispute or controversy between the insurer and insured as to the fact or extent of liability under the policy, including the insurer's obligation to defend the insured, is generally held to present an actual or justiciable controversy.[1] Declaratory suits to determine the scope of insurance coverage have often been brought independently of the underlying claims even though the exact amount to which the insurer may be liable depends on the outcome of the underlying suits against the insured who seeks the declaratory judgment.[2] A declaratory judgment that will probably settle the controversy serves a useful purpose.[3]

There is no present controversy to support declaratory judgment relief for reinsurers who seek an adjudication of their potential liability to the primary insurer, which is currently involved in state court litigation regarding its liability to the insured.[4] A product manufacturer may file suit seeking a declaration of the respective obligations of its various insurers to defend the underlying products liability suits.[5]

An injured person's interest in the liability policy of the insured, arising at the time of the injury, under a direct action statute giving an injured person who obtains a judgment the right to proceed against the insurer if his or her execution against the judgment debtor is returned unsatisfied, is sufficient to make a coverage dispute between the insurer and insured a justiciable controversy between the insurer and the injured person.[6] Because there is an actual controversy between the insurer and the injured party, an injured party has standing to defend a declaratory judgment action by the insurer notwithstanding the default of the insured.[7] Questions of coverage can create an actual controversy where such questions impinge on the parties' respective settlement positions.[8]

[FN1] *American Home Products Corp. v. Liberty Mut. Ins. Co.*, 748 F.2d 760 (2d Cir. 1984); *Farmers Alliance Mut. Ins. Co. v. Jones*, 570 F.2d 1384 (10th Cir. 1978); *Farmers Auto. Ins. Ass'n v. Janusick*, 30 Ill. App. 2d 352, 174 N.E.2d 705 (2d Dist. 1961); *Iowa Nat. Mut. Ins. Co. v. Liberty Mut. Ins. Co.*,

43 Wis. 2d 280, 168 N.W.2d 610 (1969).

Generally, as to declaratory judgments in regard to an automobile liability insurer's duty to defend, see §§ 138, 140.

[FN2] ACandS, Inc. v. Aetna Cas. and Sur. Co., 666 F.2d 819 (3d Cir. 1981); Sears, Roebuck & Co. v. Zurich Ins. Co., 422 F.2d 587 (7th Cir. 1970); Reagor v. Travelers Ins. Co., 92 Ill. App. 3d 99, 47 Ill. Dec. 507, 415 N.E.2d 512 (1st Dist. 1980).

[FN3] Aetna Cas. & Sur. Co. v. Sunshine Corp., 74 F.3d 685, 1996 FED App. 0026P (6th Cir. 1996).

[FN4] Bellefonte Reinsurance Co. v. Aetna Cas. and Sur. Co., 590 F. Supp. 187 (S.D. N.Y. 1984).

[FN5] ACandS, Inc. v. Aetna Cas. and Sur. Co., 666 F.2d 819 (3d Cir. 1981).

[FN6] Farm & City Ins. Co. v. Coover, 225 N.W.2d 335 (Iowa 1975).

[FN7] Federal Kemper Ins. Co. v. Rauscher, 807 F.2d 345 (3d Cir. 1986); Hawkeye-Security Ins. Co. v. Schulte, 302 F.2d 174, 5 Fed. R. Serv. 2d 1031 (7th Cir. 1962).

[FN8] Eureka Federal Sav. and Loan Ass'n v. American Cas. Co. of Reading, Pa., 873 F.2d 229 (9th Cir. 1989).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 131

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
2. Insurance
a. Availability of Declaratory Judgment in Matters Regarding Insurance
(2) Requisite Nature of Controversy

[Topic Summary Correlation Table References](#)

§ 132. Duty to defend

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  161, 168

A.L.R. Library

[Liability Insurer's Duty to Defend Action Against Insured After Insurer's Full Performance of its Payment Obligations Under Policy Expressly Providing that Duty to Defend Ends on Payment of Policy Limits, 16 A.L.R.6th 603](#)

Trial Strategy

[Insured's "Reasonable Expectations" as to Coverage of Insurance Policy, 108 Am. Jur. Proof of Facts 3d 351](#)

[Insured's Failure to Comply with Cooperation Clause of Liability Policy, 34 Am. Jur. Proof of Facts 2d 155](#)

[Estoppel to Assert Limitation of Insurance Coverage, 26 Am. Jur. Proof of Facts 2d 137](#)

[Insurer's Wrongful Refusal to Settle Within Policy Limits, 6 Am. Jur. Proof of Facts 2d 247](#)

Forms

[Am. Jur. Legal Forms 2d §§ 32:71 to 32:78](#)

[Am. Jur. Pleading and Practice Forms, Automobile Insurance §§ 307 to 344 \(Insurer's duty to defend insured\)](#)

[Am. Jur. Pleading and Practice Forms, Federal Practice and Procedure § 1361 \(Complaint—For declaratory](#)

judgment that insurance policy does not provide coverage and that insurer be discharged from responsibility to defend state court action—Failure of insured to give timely notice of accident)

[Am. Jur. Pleading and Practice Forms, Insurance § 241](#) (Complaint, petition, or declaration—For declaratory judgment—By insurer—For adjudication that insurance policy does not provide coverage and that insurer be discharged from responsibility to defend state court action—Failure of insured to give timely notice of accident)

Provided the controversy is ripe,[1] an insurer's duty to defend may be a proper matter to be adjudicated in a declaratory judgment proceeding.[2]

There is no remaining case or controversy to support a declaratory judgment if the issue is moot, such as where the insurer has provided a defense and there is no right of the insurer to recover the costs of defending the insured[3] or in a suit by the insured against another insurer if one of the plaintiff's insurers has already assumed responsibility for the underlying tort litigation.[4]

Declaratory judgment suits are proper to determine which of several insurance carriers has the primary duty to defend when there has been no judgment or settlement in the underlying tort action against the insured,[5] especially where coverage is admitted, but the companies are disputing who is the primary or excess carrier.[6] When the insured is denied coverage and not afforded a defense, the issue of which insurance company is primarily liable and thereby bound to defend is a justiciable controversy ripe for declaratory judgment.[7]

The duty to defend issue can be properly decided in a declaratory judgment action as separable from other coverage issues, such as the duty of indemnification.[8] Thus, a court may issue a declaratory judgment on an insurer's duty to defend while holding that the duty to indemnify is not ripe for adjudication.[9] However, the determination of whether an exclusion relieves the insurer from a duty to defend must be made in the primary lawsuit and not in an action for declaratory judgment.[10]

Practice Tip:

An anticipatory declaratory judgment is appropriate when the insurer asserts in good faith that its contract of insurance does not afford a duty to defend the alleged tortfeasor whom the insurer has undertaken to defend while the anticipatory declaratory judgment action is being resolved, and the persons affected by a resolution of the coverage questions are parties to the underlying tort action and to the anticipatory declaratory judgment action.[11] Facts extrinsic to the complaint in the tort action against the insured may form a basis for a declaratory judgment action on the issue of a duty to defend.[12]

[FN1] [Tocci Bldg. Corp. of New Jersey, Inc. v. Virginia Sur. Co.](#), 750 F. Supp. 2d 316 (D. Mass. 2010) (ripe); [Access Ins. Co. v. Carpio](#), 861 F. Supp. 2d 539 (E.D. Pa. 2012) (not ripe); [Byer Clinic & Chiropractic, Ltd. v. State Farm Fire & Cas. Co.](#), 2013 IL App (1st) 113038, 370 Ill. Dec. 472, 988 N.E.2d 670 (App. Ct. 1st Dist. 2013) (not ripe).

As to the mere threat of litigation, and the effect of establishment or lack of establishment of insured's liability, see § 133.

[FN2] [Atlantic Cas. Ins. Co. v. Value Waterproofing, Inc.](#), 918 F. Supp. 2d 243 (S.D. N.Y. 2013); [Hardenbergh v. Patrons Oxford Ins. Co.](#), 2013 ME 68, 2013 WL 3677883 (Me. 2013); [Integon Nat. Ins.](#)

Co. v. Villafranco, 745 S.E.2d 922 (N.C. Ct. App. 2013).

[FN3] Terra Nova Ins. Co. Ltd. v. 900 Bar, Inc., 887 F.2d 1213, 15 Fed. R. Serv. 3d 347 (3d Cir. 1989).

[FN4] Reichhold Chemicals, Inc. v. Travelers Ins. Co., 549 F. Supp. 197 (E.D. Mich. 1982).

[FN5] Travelers Indem. Co. v. Standard Acc. Ins. Co., 329 F.2d 329 (7th Cir. 1964); Allstate Ins. Co. v. Federated Mut. Implement & Hardware Ins. Co., 254 F. Supp. 629 (D.S.C. 1966); Companion Assurance Co. v. Alliance Assurance Co., Ltd., 21 V.I. 34, 585 F. Supp. 1382 (D.V.I. 1984).

[FN6] U. S. Fidelity & Guaranty Co. v. Millers Mut. Fire Ins. Co. of Tex., 396 F.2d 569 (8th Cir. 1968) ; Companion Assurance Co. v. Alliance Assurance Co., Ltd., 21 V.I. 34, 585 F. Supp. 1382 (D.V.I. 1984).

[FN7] Wyoming County v. Erie Lackawanna Ry. Co., 360 F. Supp. 1212, 17 Fed. R. Serv. 2d 831 (W.D. N.Y. 1973), judgment aff'd, 518 F.2d 23 (2d Cir. 1975); Vance Trucking Co. v. Canal Ins. Co., 243 F. Supp. 469 (W.D. S.C. 1965); Companion Assurance Co. v. Alliance Assurance Co., Ltd., 21 V.I. 34, 585 F. Supp. 1382 (D.V.I. 1984).

[FN8] John Deere Ins. Co. v. Shamrock Industries, Inc., 929 F.2d 413 (8th Cir. 1991).

[FN9] Atlantic Cas. Ins. Co. v. Value Waterproofing, Inc., 918 F. Supp. 2d 243 (S.D. N.Y. 2013).

[FN10] Lopez v. New Mexico Public Schools Ins. Authority, 1994-NMSC-017, 117 N.M. 207, 870 P.2d 745, 90 Ed. Law Rep. 441 (1994).

[FN11] Progressive Cas. Ins. Co. v. Herring, 22 P.3d 66 (Colo. 2001).

[FN12] Commercial Union Ins. Co. v. Royal Ins. Co., 658 A.2d 1081 (Me. 1995).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 132

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
2. Insurance
a. Availability of Declaratory Judgment in Matters Regarding Insurance
(2) Requisite Nature of Controversy

[Topic Summary Correlation Table References](#)

§ 133. Mere threat of litigation; establishment or lack of establishment of insured's liability

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  161, 168

An action by an insured seeking a declaratory judgment as to the scope of a liability insurer's promise to defend the insured does not become a ripe controversy until a suit is filed against the insured; the mere threat of litigation, or the commencement of conciliation proceedings, is not sufficient.[1]

There may be a sufficient controversy regarding coverage for justiciability and to justify an action for declaratory judgment despite the absence of a judgment of liability in the underlying suit.[2] However, an insurer is not entitled to a declaratory judgment where it seeks a declaration that it is not liable on a liability insurance policy prior to determination of whether the insured is liable in an action filed by the claimant since, in such a case, there is not yet any justiciable controversy, the existence of such controversy depending upon hypothetical and contingent occurrences.[3]

A sufficient controversy may exist between the insurer and the alleged tortfeasor after the insured obtained a judgment against the insurer in a state court action even though an appeal was pending.[4] Also, a declaratory judgment action by an insured against his or her insurer prior to establishment of the insured's liability to the claimant is not premature where the insurer has taken a firm position disclaiming coverage.[5]

[FN1] *Solo Cup Co. v. Federal Ins. Co.*, 619 F.2d 1178 (7th Cir. 1980).

[FN2] *Centennial Ins. Co. v. Ryder Truck Rental, Inc.*, 149 F.3d 378 (5th Cir. 1998); *Cincinnati Ins. Co. v. Becker Warehouse, Inc.*, 262 Neb. 746, 635 N.W.2d 112 (2001).

[FN3] *Prashker v. U.S. Guarantee Co.*, 1 N.Y.2d 584, 154 N.Y.S.2d 910, 136 N.E.2d 871 (1956); *Fort Worth Lloyds v. Garza*, 527 S.W.2d 195 (Tex. Civ. App. Corpus Christi 1975), writ refused n.r.e.,

(Nov. 19, 1975).

[FN4] *Allendale Mut. Ins. Co. v. Kaiser Engineers, Div. of Henry J. Kaiser Co.*, 804 F.2d 592 (10th Cir. 1986).

[FN5] *Stonewall Ins. Co. v. W.W. Gay Mechanical Contractor, Inc.*, 351 So. 2d 403 (Fla. 1st DCA 1977).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 133

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
2. Insurance
a. Availability of Declaratory Judgment in Matters Regarding Insurance
(3) Effect of Another Action Pending or Available

[Topic Summary Correlation Table References](#)

§ 134. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 112, 161, 171

As a general rule, jurisdiction of an action for declaratory relief in regard to insurance will not be entertained where there is already pending another action or proceeding to which the same persons are parties and in which the same issues are involved and may be adjudicated.[1] This is particularly so where there is an underlying factual issue that will have a substantial bearing on the issues raised in the declaratory judgment action.[2] Hence, prior to the resolution of an underlying tort claim, an automobile accident victim may not bring a declaratory judgment action against the tortfeasor's liability insurer to recover punitive damages and general damages for pain and discomfort, mental distress, and inconvenience because liability is not reasonably clear for those damages.[3]

While coverage questions may be litigated in a separate declaratory judgment action, those issues which will be determined in the underlying tort litigation may not.[4] When the question of insurance coverage to be resolved in the declaratory judgment proceeding would be decided in a pending tort action, it is ordinarily inappropriate to grant a declaratory judgment prior to the resolution of the underlying tort trial.[5] However, a declaratory judgment action is ordinarily available to an insured to determine the obligation of insurers to defend in the action pending against insured.[6]

Observation:

Although declaratory judgment actions are disfavored in liability insurance coverage cases while the underlying tort action is pending, such relief is appropriate prior to the trial of the tort action where the allegations in the underlying tort claims obviously constitute a patent attempt to recharacterize, as negligent, an act that is clearly intentional.[7] Issues which are independent and separable from the pending tort litigation may be properly determined in a declaratory judgment action.[8]

[FN1] *National Union Fire Ins. Co. of Pittsburgh, Pa. v. Karp*, 108 F.3d 17 (2d Cir. 1997); *Burns v. Hartford Acc. & Indem. Co.*, 157 So. 2d 84 (Fla. 3d DCA 1963); *Associated Indem. Co. v. Insurance Co. of North America*, 68 Ill. App. 3d 807, 25 Ill. Dec. 258, 386 N.E.2d 529 (1st Dist. 1979); *Brohawn v. Transamerica Ins. Co.*, 276 Md. 396, 347 A.2d 842 (1975).

[FN2] *Associated Indem. Co. v. Insurance Co. of North America*, 68 Ill. App. 3d 807, 25 Ill. Dec. 258, 386 N.E.2d 529 (1st Dist. 1979).

[FN3] *DuBray v. Farmers Ins. Exchange*, 2001 MT 251, 307 Mont. 134, 36 P.3d 897 (2001).

[FN4] *Chesapeake Physicians Professional Ass'n v. Home Ins. Co.*, 92 Md. App. 385, 608 A.2d 822 (1992).

[FN5] *Litz v. State Farm Fire and Cas. Co.*, 346 Md. 217, 695 A.2d 566 (1997).

[FN6] *Atlantic Wood Industries, Inc. v. Argonaut Ins. Co.*, 258 Ga. 800, 375 S.E.2d 221 (1989).

[FN7] *Pettit v. Erie Ins. Exchange*, 349 Md. 777, 709 A.2d 1287 (1998).

[FN8] *Richmond v. Hartford Underwriters Ins. Co.*, 126 Md. App. 166, 727 A.2d 968 (1999).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 134

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
2. Insurance
a. Availability of Declaratory Judgment in Matters Regarding Insurance
(3) Effect of Another Action Pending or Available

[Topic Summary Correlation Table References](#)

§ 135. Policy coverage; language

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  161, 168

An injured plaintiff may bring a declaratory judgment action against the defendant's insurance carrier to determine if there is policy coverage before obtaining a judgment against defendant in the personal injury action where the defendant's insurer has denied coverage,[1] and a declaratory judgment is often sought to determine an insurer's liability or coverage under a policy prior to a personal injury action since whether or not the insurer is liable will determine whether or not it must defend the insured in the action.[2] In some instances, the trial court may grant a stay in a personal injury action pending completion of a declaratory judgment action to determine a coverage issue.[3]

However, although declaratory judgment may be appropriate to determine an issue of coverage, where it is not the same issue as that being disputed in the personal injury action,[4] it is not appropriate to resolve what are in fact the ultimate issues at trial in the underlying case.[5] Also, while declaratory relief is available to determine a coverage issue where the determination does not depend upon the outcome of the underlying personal injury action,[6] it is inappropriate where the issues presented by the coverage question cannot be adequately resolved before the underlying case is resolved[7] or where the court feels that resolution of the underlying case might obviate the need for the judgment sought.[8]

[FN1] [Robinson v. Cabell Huntington Hosp., Inc.](#), 201 W. Va. 455, 498 S.E.2d 27 (1997).

As to scope of coverage constituting a sufficient controversy for a declaratory judgment action to proceed, see [§ 131](#).

[FN2] [Group Ins. Co. of Michigan v. Morelli](#), 111 Mich. App. 510, 314 N.W.2d 672 (1981).

[FN3] *Johnson v. Cape Industries, Ltd.*, 91 Ill. App. 3d 192, 46 Ill. Dec. 586, 414 N.E.2d 470 (4th Dist. 1980).

[FN4] *Smith v. North River Ins. Co.*, 360 So. 2d 313 (Ala. 1978).

[FN5] *Brohawn v. Transamerica Ins. Co.*, 276 Md. 396, 347 A.2d 842 (1975).

[FN6] *Hollander v. Nationwide Mut. Ins. Co.*, 60 A.D.2d 380, 401 N.Y.S.2d 336 (4th Dep't 1978).

[FN7] *American Home Assur. Co. v. Port Authority of New York and New Jersey*, 66 A.D.2d 269, 412 N.Y.S.2d 605 (1st Dep't 1979).

[FN8] *Aberle v. Karn*, 316 N.W.2d 779 (N.D. 1982).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 135

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
2. Insurance
a. Availability of Declaratory Judgment in Matters Regarding Insurance
(3) Effect of Another Action Pending or Available

[Topic Summary Correlation Table References](#)

§ 136. Relationship between state and federal courts

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 161, 168, 171

In particular circumstances, an action for declaratory judgment may be brought in the federal court notwithstanding a related action pending in the state court,[1] particularly where the determination of the parties' rights would alleviate any uncertainty as to the parties' contractual obligations or rights, no difficult or complex questions of state law are at issue, so the State has no compelling interest in retaining jurisdiction over the declaratory judgment action, the issues raised in the declaratory judgment action cannot be addressed in the state court more efficiently if a party is not a party to the state court tort action and could not be brought into the proceedings, none of the insurance coverage issues are involved in the state court tort action, and although the state court action is not removable, no issues already pending in the state court can be decided by the federal court in the declaratory judgment action.[2] An actual controversy necessary for the federal court to exercise jurisdiction in a declaratory judgment action may exist when the insurance carrier seeks a declaratory judgment that it has a duty neither to defend nor indemnify its insured in the state court action that has not yet proceeded to judgment.[3]

Five factors are generally considered to assess the propriety of the federal court's exercise of discretion as to whether to entertain a declaratory judgment action as to insurance coverage when insureds have been sued for alleged tort liability in state court:[4]

- whether the judgment would settle the controversy
- whether the declaratory judgment action would serve a useful purpose in clarifying the legal relations at issue
- whether the declaratory remedy is being used merely for the purpose of procedural fencing or to provide an arena for a race for res judicata

- whether the use of a declaratory action would increase the friction between federal and state courts and improperly encroach on state jurisdiction
- whether there is an alternative remedy that is better or more effective

Observation:

Considerations of judicial economy and efficiency may weigh against a federal court's resolution of the action during the pendency of the state court action.[5] Taking into account whether the judgment would settle the controversy recognizes that it makes no sense as a matter of judicial economy for a federal court to entertain a declaratory action when the result would be to try a particular controversy by piecemeal or to try particular issues without settling the entire controversy.[6]

A federal court may also elect to abstain from exercising jurisdiction where the State has a strong interest in answering an open question presented by the case.[7]

A declaratory judgment proceeding may be properly brought in federal court notwithstanding the need to apply or interpret state law where no state action is pending.[8]

[FN1] *Nautilus Ins. Co. v. Winchester Homes, Inc.*, 15 F.3d 371 (4th Cir. 1994); *American Nat. Property and Cas. Co. v. Weese*, 863 F. Supp. 297 (S.D. W. Va. 1994).

[FN2] *American Nat. Property and Cas. Co. v. Weese*, 863 F. Supp. 297 (S.D. W. Va. 1994).

[FN3] *American States Ins. Co. v. Bailey*, 133 F.3d 363 (5th Cir. 1998).

[FN4] *Scottsdale Ins. Co. v. Roumph*, 211 F.3d 964, 2000 FED App. 0158P (6th Cir. 2000).

[FN5] *National Fire Ins. Co. of Hartford v. Robertson*, 2009 WL 961466 (W.D. N.C. 2009).

[FN6] *Allstate Property and Cas. Ins. Co. v. Cogar*, 2013 WL 1975647 (N.D. W. Va. 2013).

[FN7] *Allstate Property and Cas. Ins. Co. v. Cogar*, 2013 WL 1975647 (N.D. W. Va. 2013) (question of effect of business operations exclusion in liability provisions of automobile insurance policy, as well as effect of exception for "your insured auto").

[FN8] *Maryland Cas. Co. v. Knight*, 96 F.3d 1284, 45 Fed. R. Evid. Serv. 793 (9th Cir. 1996).

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
2. Insurance
b. Particular Kinds of Insurance
(1) Automobile Liability Insurance

[Topic Summary Correlation Table References](#)

§ 137. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  166 to 171

Forms

[Federal Procedural Forms § 21:30](#) (Complaint—For declaratory judgment that insurance policy provides only excess insurance as to particular automobile accident—Uninsured motorist coverage)

[Federal Procedural Forms § 21:52](#) (Defense in answer—Admitting existence of controversy as to insurance policy coverage and alleging that policy of plaintiff affords primary coverage)

The validity and construction of automobile liability insurance policies are generally appropriate matters to be determined in declaratory judgment actions[1] provided a justiciable controversy exists.[2] In particular, questions as to the coverage of automobile liability insurance policies are properly determinable by declaratory judgment.[3]

Observation:

A federal court may abstain from hearing a declaratory judgment action on an automobile insurance policy if it raises questions of first impression under state law, such as under a new uninsured motorist law,[4] or to hear a case if the policy contains an arbitration clause.[5]

A no action clause in an automobile liability policy does not bar maintenance of an action for declaratory judgment as to liability insurance coverage prior to judgment in a negligence action against the insured.[6]

A trial court may refuse to enter a declaratory judgment in favor of an automobile liability insurer which defended the insureds under a reservation of rights.[7]

[FN1] *Home Ins. Co. v. Hillview 78 West Fire Dist.*, 395 So. 2d 43 (Ala. 1981); *Britt v. Fidelity & Cas. Co. of New York*, 360 So. 2d 116 (Fla. 3d DCA 1978); *Tavares v. Allstate Ins. Co.*, 342 So. 2d 551 (Fla. 3d DCA 1977).

[FN2] *Mid-Century Ins. Co. v. Wilburn*, 2013 WL 3991912 (Mo. Ct. App. S.D. 2013); *Transportation Ins. Co. v. WH Cleaners, Inc.*, 372 S.W.3d 223 (Tex. App. Dallas 2012); *Allstate Indem. Co. v. Thatcher*, 2007 UT App 183, 164 P.3d 445 (Utah Ct. App. 2007).

[FN3] *Hartford Cas. Ins. Co. v. Bluemile, Inc.*, 2013 WL 1090329 (S.D. Ohio 2013); *Allstate Property and Cas. Ins. Co. v. Cogar*, 2013 WL 1975647 (N.D. W. Va. 2013).

[FN4] *Smith v. Metropolitan Property and Liability Ins. Co.*, 483 F. Supp. 673 (D. Conn. 1980), judgment aff'd, 629 F.2d 757 (2d Cir. 1980).

[FN5] *Smith v. Metropolitan Property and Liability Ins. Co.*, 629 F.2d 757 (2d Cir. 1980).

[FN6] *Le Felt v. Nasarow*, 71 N.J. Super. 538, 177 A.2d 315 (Law Div. 1962), judgment aff'd, 76 N.J. Super. 576, 185 A.2d 217 (App. Div. 1962).

[FN7] *State Farm Mut. Auto. Ins. Co. v. McGee*, 759 So. 2d 358 (Miss. 1999).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 137

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014

Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
2. Insurance
b. Particular Kinds of Insurance
(1) Automobile Liability Insurance

[Topic Summary Correlation Table References](#)

§ 138. Particular matters appropriate for declaratory relief

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  166 to 171

Particular matters as to which declaratory judgments have been rendered in cases based on automobile liability insurance include such questions as whether a given automobile was covered by the policy,[1] whether the insured owned or had an interest in the vehicle as required by the policy,[2] whether the participation of an insured tortfeasor in the accident affects the victim's rights under the underinsured motorist provisions of the policy,[3] whether the insured automobile was being driven by an unlicensed or underage driver,[4] and whether the insurer has an obligation to defend.[5]

An insurer may obtain a declaratory judgment to determine the obligation of several insurers under their respective liability policies where there is a controversy as to which policy covers the accident.[6]

An automobile accident victim may bring a declaratory judgment action against the liability insurer for payment of advance medical expenses prior to the resolution of the tort claim.[7]

Caution:

A trial court may enter a declaratory judgment determining that an expense is both necessary and allowable and the amount that will be allowed, but such a declaration does not oblige a no-fault insurer to pay for an expense under the coverage for personal protection insurance benefits until it is actually incurred.[8]

[FN1] *United Services Auto. Ass'n v. Meier*, 89 A.D.2d 998, 454 N.Y.S.2d 319 (2d Dep't 1982).

[FN2] *Standard Accident Ins. Co. v. Meadows*, 125 F.2d 422 (C.C.A. 5th Cir. 1942).

[FN3] *McAllaster v. Bruton*, 655 F. Supp. 1371 (D. Me. 1987).

[FN4] *U.S. Guarantee Co. v. Seff*, 117 F.2d 985, 20 Ohio Op. 175 (C.C.A. 6th Cir. 1941).

[FN5] *ALEA London Ltd. v. Woodcock*, 286 Ga. App. 572, 649 S.E.2d 740 (2007); *North East Ins. Co. v. Young*, 2011 ME 89, 26 A.3d 794 (Me. 2011).

[FN6] *West Am. Ins. Co. v. Allstate Ins. Co.*, 295 F.2d 513 (10th Cir. 1961); *Criterion Ins. Co. v. Grange Mut. Cas. Co.*, 210 Va. 446, 171 S.E.2d 669 (1970).

[FN7] *DuBray v. Farmers Ins. Exchange*, 2001 MT 251, 307 Mont. 134, 36 P.3d 897 (2001).

[FN8] *Proudfoot v. State Farm Mut. Ins. Co.*, 469 Mich. 476, 673 N.W.2d 739 (2003).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 138

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
2. Insurance
b. Particular Kinds of Insurance
(1) Automobile Liability Insurance

Topic Summary Correlation Table References

§ 139. Failure of insured to comply with conditions of policy

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  166.1, 167

Forms

[Federal Procedural Forms § 21:28](#) (Complaint—For declaratory judgment that insurance policy does not provide coverage and that insurer be discharged from responsibility to defend state court action—Failure of insured to give timely notice of accident)

Declaratory judgments may properly be sought to adjudicate an insurer's nonliability predicated on the failure of the insured to comply with conditions of the policy,[1] such as failure to give timely notice[2] or failure to cooperate in the defense of claims or actions by injured persons.[3] However, declaratory relief may not be available where a party is entitled to a jury trial as to essential facts,[4] and declaratory relief may also be unavailable to determine whether a party breached the noncooperation clause of a contract while the main tort action is still pending.[5]

[FN1] *Employers' Liability Assur. Corp. v. Ryan*, 109 F.2d 690, 17 Ohio Op. 107 (C.C.A. 6th Cir. 1940).

[FN2] *Patrons Oxford Mut. Ins. Co. v. Garcia*, 1998 ME 38, 707 A.2d 384 (Me. 1998); *Vermont Mut. Ins. Co. v. Singleton By and Through Singleton*, 316 S.C. 5, 446 S.E.2d 417 (1994).

[FN3] *United Services Automobile Assn. v. Martin*, 120 Cal. App. 3d 963, 174 Cal. Rptr. 835 (2d Dist. 1981); *Barbian v. Cooper*, 32 Ohio Misc. 59, 61 Ohio Op. 2d 70, 285 N.E.2d 96 (C.P. 1972).

[FN4] *Farmers Ins. Co. of Oregon v. Munson*, 127 Or. App. 413, 873 P.2d 370 (1994).

[FN5] [United Services Automobile Assn. v. Martin](#), 120 Cal. App. 3d 963, 174 Cal. Rptr. 835 (2d Dist. 1981).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 139

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
2. Insurance
b. Particular Kinds of Insurance
(1) Automobile Liability Insurance

[Topic Summary Correlation Table References](#)

§ 140. Failure of insured to comply with conditions of policy—Duty to defend action against insured

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  166.1, 169

A.L.R. Library

[Liability Insurer's Duty to Defend Action Against Insured After Insurer's Full Performance of its Payment Obligations Under Policy Expressly Providing that Duty to Defend Ends on Payment of Policy Limits](#), 16 A.L.R.6th 603

Trial Strategy

[Insured's "Reasonable Expectations" as to Coverage of Insurance Policy](#), 108 Am. Jur. Proof of Facts 3d 351

[Insured's Failure to Comply with Cooperation Clause of Liability Policy](#), 34 Am. Jur. Proof of Facts 2d 155

[Estoppel to Assert Limitation of Insurance Coverage](#), 26 Am. Jur. Proof of Facts 2d 137

[Insurer's Wrongful Refusal to Settle Within Policy Limits](#), 6 Am. Jur. Proof of Facts 2d 247

Forms

Am. Jur. Legal Forms 2d §§ 32:71 to 32:78

[Am. Jur. Pleading and Practice Forms, Automobile Insurance §§ 307 to 344](#) (Insurer's duty to defend insured)

Declaratory relief is generally available to determine the duty of an insurer to defend a particular action that

has been brought against the insured,[1] including questions as to liability for the costs of defense among multiple parties.[2] A pending action, or the threat of an action against an insured, may afford a sufficient basis to permit an insurer to seek a declaratory judgment to determine its obligation to defend an action or to pay a judgment which might be rendered in such an action.[3] Thus, a declaratory judgment may be available as to whether a failure to give timely, written notice obviates a duty to defend.[4] However, where the only question at issue is whether an insurer was a primary insurer or only liable as an excess carrier, a declaratory judgment action is not maintainable since, whether it is a primary or excess carrier, its obligation to defend its insured is the same.[5] Moreover, an action to declare the insurer's duty to indemnify is premature and does not lie where the complaint in the underlying action alleges several grounds of liability, some of which invoke the coverage of the policy, and where the issues of indemnification and coverage hinge on facts which will necessarily be decided in that underlying action.[6]

[FN1] *Temperance Ins. Exchange v. Carver*, 83 Idaho 487, 365 P.2d 824 (1961); *Poynter v. Fidelity & Cas. Co. of New York*, 140 So. 2d 42 (La. Ct. App. 3d Cir. 1962); *Transportation Ins. Co. v. WH Cleaners, Inc.*, 372 S.W.3d 223 (Tex. App. Dallas 2012).

As to the duty to defend constituting an actual controversy sufficient to proceed in an action for declaratory judgment, see § 132.

[FN2] *Blackburn, Nickels & Smith, Inc. v. National Farmers Union Property & Cas. Co.*, 452 N.W.2d 319 (N.D. 1990).

[FN3] *Ohio Farmers Indem. Co. v. Chames*, 170 Ohio St. 209, 10 Ohio Op. 2d 164, 163 N.E.2d 367 (1959).

[FN4] *Elkowitz v. Farm Family Mut. Ins. Co.*, 180 A.D.2d 711, 579 N.Y.S.2d 740 (2d Dep't 1992).

[FN5] *U.S. Fidelity & Guaranty Co. v. Watson*, 106 Ga. App. 748, 128 S.E.2d 515 (1962).

[FN6] *American Auto. Ins. Co. v. Security Income Planners & Co.*, 847 F. Supp. 2d 454 (E.D. N.Y. 2012) (applying New York law).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 140

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
2. Insurance
b. Particular Kinds of Insurance
(2) Other Particular Kinds of Insurance

[Topic Summary Correlation Table References](#)

§ 141. Liability insurance other than automobile liability insurance

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  161, 165

An injured party may seek a declaratory judgment against a liability insurer before the insured tortfeasor's underlying liability has been determined^[1] when the two issues are independent and separable.^[2] Although declaratory judgment actions are disfavored in liability insurance coverage cases while an underlying tort action is pending, such relief is appropriate prior to the trial of the tort action where allegations in the underlying tort claims obviously constitute a patent attempt to recharacterize, as negligent, an act that is clearly intentional.^[3] A liability insurer does not have to wait until an injured party actually sues the insured before seeking a declaration that an intentional acts exclusion bars its duties to defend and indemnify where the policy provides that the insurer's duties commence not just upon a suit but also upon the making of a claim.^[4] Similarly, a liability insurer is not required to await the filing of a tort complaint in order to seek declaratory relief where the insurer disputes duties to defend and indemnify based on issues such as nonpayment of the premium, cancellation of the policy, failure to cooperate, or lack of timely notice.^[5]

A general liability insurer's duty to indemnify is appropriate for resolution in a pretrial declaratory judgment action where the issue of when injuries first occurred is independent and separable from claims asserted in the underlying tort action against insured.^[6] However, a professional liability insurer's attempt to obtain a declaration of noncoverage that would be binding on claimants, who may possibly allege in a later action that they were subjected to improper sexual contact by the insured physician, is inappropriate where more effective relief is available in other proceedings in which the nature of the claims can be known.^[7] Also, a medical malpractice insurer's request for declaratory relief as to a duty of indemnification may be premature where issues of liability are intertwined with theories under which indemnification may be available.^[8]

With the exception of damages for which liability is reasonably clear, a third party may not bring a declaratory judgment action to determine a liability insurer's obligations prior to the resolution of the underlying claim on which liability is premised.^[9]

[FN1] *ALEA London Ltd. v. Woodcock*, 286 Ga. App. 572, 649 S.E.2d 740 (2007).

[FN2] *Richmond v. Hartford Underwriters Ins. Co.*, 126 Md. App. 166, 727 A.2d 968 (1999).

[FN3] *Pettit v. Erie Ins. Exchange*, 349 Md. 777, 709 A.2d 1287 (1998).

[FN4] *Ohio Cas. Ins. Co. v. Horner*, 1998 ND 168, 583 N.W.2d 804 (N.D. 1998).

[FN5] *Patrons Oxford Mut. Ins. Co. v. Garcia*, 1998 ME 38, 707 A.2d 384 (Me. 1998).

[FN6] *Chantel Associates v. Mount Vernon Fire Ins. Co.*, 338 Md. 131, 656 A.2d 779 (1995).

[FN7] *Medical Protective Co. v. Schrein*, 255 Neb. 24, 582 N.W.2d 286 (1998).

[FN8] *Midwest Medical Ins. Co. v. Doe*, 1999 ND 17, 589 N.W.2d 581 (N.D. 1999).

[FN9] *DuBray v. Farmers Ins. Exchange*, 2001 MT 251, 307 Mont. 134, 36 P.3d 897 (2001).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 141

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
2. Insurance
b. Particular Kinds of Insurance
(2) Other Particular Kinds of Insurance

Topic Summary Correlation Table References

§ 142. Life, health, and accident insurance

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  163.1, 164

Forms

[Am. Jur. Pleading and Practice Forms, Declaratory Judgments § 12](#) (Complaint, petition, or declaration—To determine obligation of insurance company as to claimed wrongful death of its named insured)

Provided that an actual controversy is presented,[1] a declaratory judgment may be granted to determine the rights of insureds relative to life insurance policies,[2] including a determination as to the disposition of the proceeds,[3] or to settle the question whether an insured's death was accidental within the meaning of an accident policy.[4] A declaratory judgment action is a proper means for an insurer to assert a claim that life insurance policies are void or voidable,[5] but a declaratory judgment action is not the appropriate action for seeking a reformation of the policy terms to conform to the representations made by an insurance agent.[6]

A declaratory judgment may be granted determining the rights and obligations of the insurer and the insured under disability provisions of life or health and accident policies.[7]

[FN1] [Principal Life Ins. Co. v. Lawrence Rucker 2007 Ins. Trust](#), 674 F. Supp. 2d 562 (D. Del. 2009).

[FN2] [Chastang v. Mutual Life Ins. Co. of N. Y.](#), 95 Ohio App. 323, 53 Ohio Op. 237, 119 N.E.2d 81 (2d Dist. Franklin County 1952), judgment aff'd, 159 Ohio St. 167, 50 Ohio Op. 141, 111 N.E.2d 395 (1953) (determination of loan value of policy); [Madget v. Madget](#), 85 Ohio App. 18, 40 Ohio Op. 37, 55 Ohio L. Abs. 450, 87 N.E.2d 918 (1st Dist. Hamilton County 1949) (determination of interest in a matured life insurance policy).

[FN3] [Arrowood v. Duff](#), 287 Ky. 107, 152 S.W.2d 291 (1941); [Federal Trust Co. v. Damron](#), 124 Neb.

655, 247 N.W. 589 (1933).

[FN4] *Massachusetts Cas. Ins. Co. v. Johansen*, 270 So. 2d 397 (Fla. 3d DCA 1972).

[FN5] *US Bank Nat. Ass'n v. PHL Variable Ins. Co.*, 288 F.R.D. 282 (S.D. N.Y. 2012).

[FN6] *Martin v. Equitable Life Assur. Soc. of the U.S.*, 344 Ark. 177, 40 S.W.3d 733 (2001).

[FN7] *Stoner v. New York Life Ins. Co.*, 311 U.S. 464, 61 S. Ct. 336, 85 L. Ed. 284 (1940); *Fowler v. Farm Bureau Mut. Ins. Co. of Ind.*, 137 Ind. App. 375, 209 N.E.2d 262 (1965).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 142

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
2. Insurance
b. Particular Kinds of Insurance
(2) Other Particular Kinds of Insurance

[Topic Summary Correlation Table References](#)

§ 143. Property insurance

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  161, 165

Provided that an actual controversy is presented,[1] questions of coverage and liability under fire and other property insurance policies may be determined in declaratory judgment actions.[2] Such actions may be used to determine the respective liabilities of two insurers,[3] or the nonliability of insurers because of alleged fraud on the part of the insured,[4] where, for example, declaratory relief may be granted in cases where it is alleged the insured intentionally caused the fire in question, thus negating coverage.[5] Although declaratory judgment actions that are brought by insurers in advance of underlying tort actions are not a favored means of resolving liability coverage disputes, a declaratory judgment on whether a homeowners' policy provides liability coverage for the alleged sexual molestation of children is proper in advance of the resolution of the underlying tort action.[6] However, a declaratory judgment is not appropriate where an insurer claims a reason to believe it has an arson defense, but demand for payment for the destruction of the property in question has not been presented by the insured.[7]

[FN1] *Biscayne Cove Condominium Ass'n, Inc. v. QBE Ins. Corp.*, 2013 WL 2646799 (S.D. Fla. 2013); *Ross Nesbit Agencies, Inc. v. Atlantic Mut. Ins. Co.*, 2009 WL 511681 (Minn. Ct. App. 2009).

[FN2] *State Farm Fire & Cas. Co. v. Fuller*, 150 Ga. App. 387, 258 S.E.2d 13 (1979); *U. S. Fire Ins. Co. v. Dace*, 305 N.W.2d 50 (S.D. 1981).

[FN3] *McPherrin v. Hartford Fire Ins. Co.*, 44 F. Supp. 674 (N.D. Cal. 1942) (loss by fire of livestock in transit).

[FN4] *Hargrove v. American Cent. Ins. Co.*, 125 F.2d 225 (C.C.A. 10th Cir. 1942); *National Liberty Ins. Co. of America v. Silva*, 1939-NMSC-023, 43 N.M. 283, 92 P.2d 161 (1939) (alleged connivance

in fraudulently causing loss).

[FN5] *Sussex Mut. Ins. Co. v. Hala Cleaners, Inc.*, 75 N.J. 117, 380 A.2d 693 (1977); *U. S. Fire Ins. Co. v. Dace*, 305 N.W.2d 50 (S.D. 1981).

[FN6] *Pettit v. Erie Ins. Exchange*, 117 Md. App. 212, 699 A.2d 550 (1997), *aff'd*, 349 Md. 777, 709 A.2d 1287 (1998).

[FN7] *State Farm Fire & Cas. Co. v. Fuller*, 150 Ga. App. 387, 258 S.E.2d 13 (1979).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 143

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
3. Wills, Trusts, and Estates; Future Interests
a. In General

[Topic Summary Correlation Table References](#)

§ 144. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 241, 242

Under the Uniform Declaratory Judgments Act, any person interested as or through an executor, administrator, trustee, guardian, or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust, in the administration of a trust, or of the estate of a decedent, an infant, lunatic, or insolvent, may have a declaration of rights or legal relations:

- to ascertain any class of creditors, devisees, legatees, heirs, next of kin, or others[1]
- to direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity[2]
- to determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings[3]

Thus, a declaratory judgment may generally be rendered with respect to the construction and validity of wills[4] provided that an actual, justiciable controversy is presented[5] and that the declaration sought will render practical help in ending the dispute.[6] For example, a declaratory judgment action is a proper procedure to determine whether a premarital will of the deceased's spouse precludes the surviving spouse from taking an elective share,[7] or whether a will beneficiary has forfeited his or her interest in the estate under an in terrorem clause by pursuing an action for an accounting and for removal of the executor,[8] or to clarify the meaning or application of a court order regarding a surviving spouse's elective share.[9]

Caution:

A declaratory judgment action may not be used to determine the validity of a claim that a valid will exists since to do so would subvert the statutory scheme and time limitations established by the state probate law.[10] Similarly, the exclusive method of challenging a will alleged to be invalid on the ground of undue influence is by a

will contest action.[11]

[FN1] Unif. Declaratory Judgments Act § 4(a).

[FN2] Unif. Declaratory Judgments Act § 4(b).

[FN3] Unif. Declaratory Judgments Act § 4(c).

[FN4] *Katz Inv. Co. v. Lynch*, 242 Iowa 640, 47 N.W.2d 800 (1951); *Taylor v. Taylor*, 301 N.C. 357, 271 S.E.2d 506 (1980); *Wise v. Poston*, 281 S.C. 574, 316 S.E.2d 412 (Ct. App. 1984); *Blackmon v. Parker*, 544 S.W.2d 810 (Tex. Civ. App. El Paso 1976), writ granted, (Mar. 23, 1977) and judgment aff'd, 553 S.W.2d 623 (Tex. 1977).

[FN5] *In re Brown*, 484 B.R. 322 (Bankr. E.D. Ky. 2012); *Sinclair v. Sinclair*, 284 Ga. 500, 670 S.E.2d 59 (2008); *In re Mampe*, 2007 PA Super 269, 932 A.2d 954 (2007).

[FN6] *In re Mampe*, 2007 PA Super 269, 932 A.2d 954 (2007); *Di Portanova v. Monroe*, 229 S.W.3d 324 (Tex. App. Houston 1st Dist. 2006).

[FN7] *Mongold v. Mayle*, 192 W. Va. 353, 452 S.E.2d 444 (1994).

[FN8] *Sinclair v. Sinclair*, 284 Ga. 500, 670 S.E.2d 59 (2008).

[FN9] *Willard v. Whited*, 211 W. Va. 522, 566 S.E.2d 881 (2002).

[FN10] *Howard Hughes Medical Institute v. Lummis*, 596 S.W.2d 171 (Tex. Civ. App. Houston 14th Dist. 1980), writ refused n.r.e., (June 25, 1980).

[FN11] *Davidson v. Brate*, 44 Ohio App. 2d 248, 73 Ohio Op. 2d 253, 337 N.E.2d 642 (1st Dist. Butler County 1974).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 144

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
3. Wills, Trusts, and Estates; Future Interests
a. In General

[Topic Summary Correlation Table References](#)

§ 145. Application in matters involving trusts and estates

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑242

Forms

[Am. Jur. Pleading and Practice Forms, Declaratory Judgments § 8](#) (Complaint, petition, or declaration—To determine rights with respect to administration of trust or estate)

Declaratory judgments may be rendered to settle controversies relating to the construction and validity of trust instruments, as well as to determine controversies relating to decedents' estates and the administration of estates and trusts.[1] Thus, for example, declaratory relief is appropriate to determine how the testamentary trust corpus should be distributed upon the death of affected persons and regarding the distribution of trust income upon the death of the income beneficiary.[2] Such relief may also be appropriate to determine remainder interests under a trust;[3] to ascertain the proper allocation, as between trust principal and trust income, of a distribution by a regulated investment company of capital gains;[4] to determine the trust's obligations where there are competing obligations and trust principal is in danger of being depleted;[5] to interpret a trust provision;[6] to provide fiduciaries instructions in circumstances with respect to such matters as borrowing funds,[7] making distributions,[8] or subdividing trusts to minimize federal generation-skipping transfer taxes;[9] and to give directions for administration of an estate.[10]

In order for declaratory relief to be granted, however, there must, as in other cases, exist an actual controversy relating to the matters to be considered.[11] Declarations in respect of such matters may be refused where the question involved could be determined equally well in other proceedings.[12]

Courts will not ordinarily render declaratory judgments for the purpose of controlling the action of a trustee in matters entrusted to the trustee's discretion by the instrument which created the trust.[13]

[FN1] *Lloyd v. Weir*, 116 Conn. 201, 164 A. 386 (1933); *Colver v. Miller*, 127 Kan. 72, 272 P. 106 (1928); *Wachovia Bank & Trust Co. v. Lambeth*, 213 N.C. 576, 197 S.E. 179, 117 A.L.R. 117 (1938).

[FN2] *Wing v. Wachovia Bank & Trust Co., N. A.*, 44 N.C. App. 402, 261 S.E.2d 279 (1980), judgment aff'd in part, rev'd in part on other grounds, 301 N.C. 456, 272 S.E.2d 90 (1980).

[FN3] *Matter of Wehrhane's Estate*, 149 N.J. Super. 41, 372 A.2d 1365 (Ch. Div. 1977).

[FN4] *Tait v. Peck*, 346 Mass. 521, 194 N.E.2d 707, 98 A.L.R.2d 503 (1963).

[FN5] *MacKenzie v. First Alabama Bank*, 598 So. 2d 1367 (Ala. 1992).

[FN6] *In re Arnott*, 190 Ohio App. 3d 493, 2010-Ohio-5392, 942 N.E.2d 1124 (4th Dist. Highland County 2010), motion to certify allowed, 128 Ohio St. 3d 1410, 2011-Ohio-828, 942 N.E.2d 383 (2011) and appeal not allowed, 128 Ohio St. 3d 1414, 2011-Ohio-828, 942 N.E.2d 386 (2011) and judgment aff'd, 132 Ohio St. 3d 401, 2012-Ohio-3208, 972 N.E.2d 586 (2012).

[FN7] *Myrick v. Moody Nat. Bank*, 336 S.W.3d 795 (Tex. App. Houston 1st Dist. 2011).

[FN8] *Pack v. Osborn*, 117 Ohio St. 3d 14, 2008-Ohio-90, 881 N.E.2d 237 (2008).

[FN9] *Fleet Nat. Bank v. Marquis*, 437 Mass. 1010, 771 N.E.2d 133 (2002).

[FN10] *Dickey v. Herbin*, 250 N.C. 321, 108 S.E.2d 632 (1959).

[FN11] *In re Peierls Family Inter Vivos Trusts*, 59 A.3d 471 (Del. Ch. 2012); *Wells v. Wells*, 24 So. 3d 579 (Fla. 4th DCA 2009).

[FN12] *In re Uhl's Estate*, 98 Ohio App. 145, 57 Ohio Op. 212, 128 N.E.2d 142 (3d Dist. Marion County 1954).

[FN13] *Stetson v. Community Chest of the Oranges & Maplewood*, 24 N.J. Super. 243, 93 A.2d 796 (Ch. Div. 1952).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 145

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
3. Wills, Trusts, and Estates; Future Interests
b. Future Interests

[Topic Summary Correlation Table References](#)

§ 146. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  241, 242

The basic principle that the courts will not declare the rights of parties upon a state of facts which has not arisen, nor upon a matter which is future, contingent, and uncertain, unless a present right depends upon the decision or there are other special circumstances which make it desirable at once to decide on the future rights, is generally recognized in cases involving the question of such relief in connection with future interests.[1] Thus, where there is no demonstrated present necessity for a declaration, where the parties whose presence is necessary for the declaration to be effective are not before the court, and where no certainty exists that the events involved will occur, declaratory relief will be denied.[2]

[FN1] *National Shawmut Bank of Boston v. Morey*, 320 Mass. 492, 70 N.E.2d 316, 174 A.L.R. 871 (1946); *Dodson v. Maroney*, 15 Mass. App. Ct. 982, 447 N.E.2d 1256 (1983); *Orr v. Moses*, 94 N.H. 309, 52 A.2d 128 (1947); *Citizens' Nat. Bank v. Morgan*, 94 N.H. 284, 51 A.2d 841, 170 A.L.R. 1215 (1947); *Fidelity-Philadelphia Trust Co. v. Jameson*, 137 N.J. Eq. 385, 45 A.2d 134 (Ch. 1946); *Coleman v. Henry*, 184 Tenn. 550, 201 S.W.2d 686 (1947).

[FN2] *Byers v. Byers*, 254 F.2d 205 (5th Cir. 1958).

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
3. Wills, Trusts, and Estates; Future Interests
b. Future Interests

Topic Summary Correlation Table References

§ 147. Validity of provisions or instruments concerning future interest

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 241, 242

When a party claiming an interest in property seeks a declaration as to the validity of provisions or instruments concerning future interests, the courts, depending on the circumstances, may declare such rights fully.^[1] In other instances, the courts may declare such rights partially, leaving for future declaration such questions as do not require an immediate adjudication.^[2] However, where the circumstances are not such as to require a present adjudication, the court may refuse to make a declaration.^[3]

[FN1] *Caldwell v. Rosenberg*, 47 Cal. App. 2d 143, 117 P.2d 366 (1st Dist. 1941).

[FN2] *Warren, Estate of*, 320 Pa. 112, 182 A. 396, 104 A.L.R. 1345 (1936).

[FN3] *Potter v. Watkins*, 99 N.J. Eq. 538, 134 A. 84 (Ch. 1926).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 147

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
3. Wills, Trusts, and Estates; Future Interests
b. Future Interests

[Topic Summary Correlation Table References](#)

§ 148. Nature and extent of future interests

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  [241](#), [242](#)

In cases involving the nature and extent of a future interest, circumstances will determine whether the court will make a complete^[1] or partial declaration,^[2] or will refuse a declaration,^[3] with varying results depending on the particular issues.^[4]

While the courts may grant declarations determining whether the interest claimed by a party was vested or contingent,^[5] in other circumstances, the courts may refuse to make such a declaration or determination.^[6]

[FN1] [Sample v. Ward](#), 156 Fla. 210, 23 So. 2d 81 (1945).

[FN2] [Story v. First Nat. Bank & Trust Co., in Orlando](#), 115 Fla. 436, 156 So. 101 (1934).

[FN3] [Moore v. Emery](#), 137 Me. 259, 18 A.2d 781 (1941).

[FN4] [Epperson v. Bennett](#), 161 Kan. 298, 167 P.2d 606, 166 A.L.R. 816 (1946); [Ryan v. Herbert](#), 186 Md. 453, 47 A.2d 360 (1946) (complete declaration); [Price v. Shiels](#), 149 Neb. 330, 31 N.W.2d 91 (1948) (declaration refused); [Lockwood v. Clarke](#), 136 N.J. Eq. 195, 41 A.2d 37 (Ch. 1945) (partial declaration).

[FN5] [Katz Inv. Co. v. Lynch](#), 242 Iowa 640, 47 N.W.2d 800 (1951); [In re Johnson's Estate](#), 403 Pa. 476, 171 A.2d 518 (1961).

[FN6] [Lanston v. Children's Hospital](#), 148 F.2d 689 (App. D.C. 1945); [National Shawmut Bank of Boston v. Morey](#), 320 Mass. 492, 70 N.E.2d 316, 174 A.L.R. 871 (1946).

rights reserved.

AMJUR DECLJUDS § 148

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
3. Wills, Trusts, and Estates; Future Interests
b. Future Interests

[Topic Summary Correlation Table References](#)

§ 149. Nature and extent of future interests—Persons entitled to remainder interest

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  241, 242

In dealing with the question of what persons are entitled to a remainder interest, the courts have generally refused a declaration, on the ground that the question should not be determined until after termination of the life estate.[1] Hypothetical questions are not appropriate for a declaratory judgment,[2] and a declaratory judgment will not be granted where the plaintiff fails to establish a necessity for a determination of the dispute to guide and protect the plaintiff from uncertainty and insecurity with regard to the propriety of some future act or conduct, which is properly incident to the plaintiff's alleged rights and which if taken without direction might reasonably jeopardize the plaintiff's interest.[3] On the other hand, a declaration of remainder interests may be proper where it is necessary for the determination of tax consequences to the remaindermen.[4]

[FN1] *Wright v. Heffernan*, 205 Ga. 75, 52 S.E.2d 289 (1949) (overruled in part on other grounds by, *Calvary Independent Baptist Church v. City of Rome*, 208 Ga. 312, 66 S.E.2d 726 (1951)); *Epperson v. Bennett*, 161 Kan. 298, 167 P.2d 606, 166 A.L.R. 816 (1946); *Creighton v. Hayes*, 209 Tenn. 364, 354 S.W.2d 73 (1962).

[FN2] *Anderson v. Dimick*, 77 So. 2d 867 (Fla. 1955).

[FN3] *Newcomer v. Newcomer*, 278 Ga. 776, 606 S.E.2d 238 (2004).

[FN4] *Matter of Wehrhane's Estate*, 149 N.J. Super. 41, 372 A.2d 1365 (Ch. Div. 1977).

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
3. Wills, Trusts, and Estates; Future Interests
b. Future Interests

[Topic Summary Correlation Table References](#)

§ 150. Nature and extent of future interests—Instructions to fiduciaries

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  241, 242

Fiduciaries seeking instructions as to the validity or nature of future interests may seek declaratory relief.[1] However, in the absence of an actual controversy, such relief will be denied.[2] As in the case of declaratory relief with regard to future interests generally, fiduciaries seeking instructions may, in some cases, be unable to obtain a declaration as to whether an interest is vested or contingent.[3]

[FN1] [New Britain Trust Co. v. Stanley](#), 128 Conn. 386, 23 A.2d 142 (1941); [First Nat. Bank & Trust Co. v. Baker](#), 124 Conn. 577, 1 A.2d 283, 118 A.L.R. 339 (1938); [Cross v. Cross](#), 20 N.J. Misc. 359, 27 A.2d 877 (Sup. Ct. 1942).

[FN2] [In re Sterrett's Estate](#), 300 Pa. 116, 150 A. 159 (1930).

[FN3] [National Shawmut Bank of Boston v. Morey](#), 320 Mass. 492, 70 N.E.2d 316, 174 A.L.R. 871 (1946).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 150

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
4. Property Rights and Conveyances
a. In General

[Topic Summary Correlation Table References](#)

§ 151. Title and property rights, generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  181, 182

Forms

[Am. Jur. Pleading and Practice Forms, Declaratory Judgments § 20](#) (Complaint, petition, or declaration—To determine unencumbered interest in property)

So long as a justiciable controversy is presented^[1] and any applicable statutory requirements are satisfied,^[2] an action for declaratory judgment is appropriate in cases involving rights in property,^[3] including the adjudication of the title to real or personal property.^[4]

Caution:

In cases involving record title to numerous tracts of land and multiple parties, declaratory judgment relief will seldom, if ever, be available.^[5]

Suits in the nature of a suit to quiet title are essentially declaratory in nature.^[6] Declaratory judgments are proper in cases involving disputed boundaries,^[7] to determine permissible uses of property,^[8] and in condemnation cases.^[9]

A declaratory judgment will generally not be rendered where another appropriate remedy is available,^[10] or where the case presents an issue as to which an exclusive remedy has been established,^[11] but the availability of another kind of action may not necessarily preclude proceeding on a declaratory judgment.^[12]

[FN1] [Martin v. Garner](#), 286 Va. 76, 745 S.E.2d 419 (2013).

[FN2] [Meekins v. Wisnoski](#), 2013 WL 2106011 (Tex. App. Houston 14th Dist. 2013) (Texas Declarat-

ory Judgments Act).

[FN3] *Hodgdon v. Campbell*, 411 A.2d 667 (Me. 1980).

[FN4] *Angelle v. Prejean*, 391 So. 2d 511 (La. Ct. App. 3d Cir. 1980); *Klever v. Klever*, 333 Mich. 179, 52 N.W.2d 653 (1952); *Newton v. Town of Middletown*, 31 A.D.3d 1004, 820 N.Y.S.2d 154 (3d Dep't 2006); *City of Zanesville v. Zanesville Canal & Mfg. Co.*, 159 Ohio St. 203, 50 Ohio Op. 254, 111 N.E.2d 922 (1953); *In re Dahl's Estate*, 196 Or. 249, 248 P.2d 700, 32 A.L.R.2d 965 (1952); *McAdams v. Town of Barnard*, 182 Vt. 259, 2007 VT 61, 936 A.2d 1310 (2007).

[FN5] *Porter v. Houghton*, 273 Ga. 407, 542 S.E.2d 491 (2001).

[FN6] *Stone Street Asset Trust v. Blue*, 821 F. Supp. 2d 672 (D. Del. 2011); *Kirstein v. Kirstein*, 64 N.C. App. 191, 306 S.E.2d 552 (1983); *Morad v. Brown*, 549 P.2d 312 (Wyo. 1976).

[FN7] *Toombs v. Gil*, 353 So. 2d 934 (Fla. 3d DCA 1978); *Poulin v. Town of Danville*, 128 Vt. 161, 260 A.2d 208 (1969); *City of Whitewater v. Baker*, 99 Wis. 2d 449, 299 N.W.2d 584 (Ct. App. 1980).

[FN8] *Lambert v. Justus*, 335 So. 2d 818 (Fla. 1976); *Union Oil Co. of California v. City of Worthington*, 62 Ohio St. 2d 263, 16 Ohio Op. 3d 315, 405 N.E.2d 277 (1980).

[FN9] *Collopy v. Wildlife Commission, Dept. of Natural Resources*, 625 P.2d 994 (Colo. 1981); *Lower Colorado River Authority v. McIntyre*, 494 S.W.2d 219 (Tex. Civ. App. Austin 1973).

[FN10] *Cape Sable Corp. v. McClurg*, 74 So. 2d 883 (Fla. 1954); *Franza v. Olin*, 73 A.D.3d 44, 897 N.Y.S.2d 804 (4th Dep't 2010).

[FN11] *Basley v. Adoni Holdings, LLC*, 373 S.W.3d 577 (Tex. App. Texarkana 2012).

[FN12] *Salinas v. Gutierrez*, 341 S.W.2d 558 (Tex. Civ. App. San Antonio 1960), writ refused n.r.e., (Apr. 26, 1961) (possibility of proceeding in trespass did not preclude declaratory relief).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 151

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
4. Property Rights and Conveyances
a. In General

[Topic Summary Correlation Table References](#)

§ 152. Deeds

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  [181](#), [183](#), [184](#)

The Uniform Declaratory Judgments Act specifically provides that declaratory judgment proceedings are available to determine the validity and construction of deeds,^[1] pursuant to which parties may seek a declaration determining the respective rights of the affected parties,^[2] including a determination as to the validity of deeds.^[3] However, no action for a declaratory judgment will lie in the absence of a justiciable case or controversy,^[4] and there is authority that when plaintiff's claims are a means to determine title to a tract of property, they can be brought only as a trespass to try title action and not as an action for a declaratory judgment.^[5]

Under the Federal Declaratory Judgment Act,^[6] a federal court, insofar as it otherwise has jurisdiction over the parties, is authorized to entertain a declaratory judgment action involving the construction of a deed.^[7]

Caution:

Persons seeking a declaratory judgment with respect to a deed must show that they are in doubt concerning their own rights under the instrument.^[8]

A declaratory judgment may be appropriate in disputes involving the location of boundary lines fixed by deed.^[9]

CUMULATIVE SUPPLEMENT

Cases:

Borrower under deed of trust lacked standing to pursue a declaratory relief or wrongful foreclosure claim to challenge the purported deed of trust assignee's foreclosure on borrower's home on the basis that the assignment of the deed to the purported assignee was invalid, since borrower's obligations under the note remained unchanged after the purported assignment. [Yvanova v. New Century Mortgage Corporation](#), 226 Cal. App. 4th 495, 172 Cal. Rptr. 3d 104 (2d Dist. 2014).

[END OF SUPPLEMENT]

[FN1] Unif. Declaratory Judgments Act § 2.

[FN2] *Western Sav. & Loan Ass'n v. Robinson*, 14 Ariz. App. 393, 483 P.2d 806 (Div. 1 1971); *State Bd. of Trustees of Internal Imp. Trust Fund v. Pineta Co.*, 287 So. 2d 126 (Fla. 3d DCA 1973); *Bentley v. School Dist. No. 025 of Custer County, Nebraska*, 255 Neb. 404, 586 N.W.2d 306, 130 Ed. Law Rep. 900 (1998); *Parker v. Blackmon*, 553 S.W.2d 623 (Tex. 1977).

[FN3] *Giroir v. Dumesnil*, 248 La. 1037, 184 So. 2d 1, 21 A.L.R.3d 765 (1966); *Cloud v. Cloud*, 425 So. 2d 329 (La. Ct. App. 3d Cir. 1982); *Colquhoun v. Webber*, 684 A.2d 405 (Me. 1996).

[FN4] *Smith v. City of League City*, 338 S.W.3d 114 (Tex. App. Houston 14th Dist. 2011) (judicial admission that deed was void).

[FN5] *Archaeological Conservancy v. Wilson Land and Cattle Co.*, 2010 WL 1253576 (Tex. App. Austin 2010).

[FN6] 28 U.S.C.A. § 2201.

[FN7] *Johnson v. Wheeler*, 492 F. Supp. 2d 492, 44 A.L.R.6th 595 (D. Md. 2007).

[FN8] *City of Pinellas Park v. Matthews*, 355 So. 2d 475 (Fla. 2d DCA 1978) (suggesting that a quiet title action might be the appropriate remedy).

[FN9] *State Bd. of Trustees of Internal Imp. Trust Fund v. Pineta Co.*, 287 So. 2d 126 (Fla. 3d DCA 1973).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 152

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
4. Property Rights and Conveyances
a. In General

Topic Summary Correlation Table References

§ 153. Easements

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  185

Forms

[Am. Jur. Pleading and Practice Forms, Easements and Licenses § 3](#) (Complaint, petition, or declaration—For declaratory judgment as to way of necessity—Extent of use permissible)

[Am. Jur. Pleading and Practice Forms, Easements and Licenses § 5](#) (Complaint, petition, or declaration—For declaratory judgment as to extinguishment of easement—Termination of easement and quieting title)

[Am. Jur. Pleading and Practice Forms, Easements and Licenses § 36](#) (Complaint, petition, or declaration—For declaratory relief—To determine rights of parties to expansible pipeline easement regarding laying of additional pipeline)

Actions for a declaratory judgment are commonly used in resolving controversies over easements.[1] Thus, a declaratory judgment action may be brought to determine the right to an easement[2] or determine the relative rights of parties affected by an easement[3] or whether an easement has been created.[4] Although courts may grant declaratory relief regarding rights-of-way where owners claim a violation of rights to their use of property,[5] relief will be denied where the controversy has become moot[6] or where the owners merely allege the future possibility of harm.[7]

Where a county takes an easement across property, the appropriate remedy is one in damages for the taking, not a declaratory judgment.[8]

[FN1] *Michael, LLC v. 8204 Associates Ltd. Liability Co.*, 207 Md. App. 666, 53 A.3d 509 (2012).

[FN2] *Wechsler v. People*, 147 A.D.2d 755, 537 N.Y.S.2d 900 (3d Dep't 1989); *Woodlief v. Johnson*,

75 N.C. App. 49, 330 S.E.2d 265 (1985); LDDC, Inc. v. Pressley, 71 N.C. App. 431, 322 S.E.2d 416 (1984).

[FN3] National Wildlife Federation v. Espy, 45 F.3d 1337, 31 Fed. R. Serv. 3d 1075 (9th Cir. 1995); Pembroke Center, LLC v. State, Department of Transp., 64 So. 3d 737 (Fla. 4th DCA 2011); Johnson v. Keith, 2013-Ohio-451, 2013 WL 501738 (Ohio Ct. App. 12th Dist. Clermont County 2013).

[FN4] Mutz v. Le Sage, 1956-NMSC-054, 61 N.M. 219, 297 P.2d 876 (1956); Coccio v. Parisi, 151 A.D.2d 817, 542 N.Y.S.2d 405 (3d Dep't 1989) (agreed facts too vague to support declaratory judgment as to alleged prescriptive easement).

[FN5] Anderson v. McRae, 495 S.W.2d 351 (Tex. Civ. App. Texarkana 1973).

[FN6] Gay v. Dube, 2012 ME 30, 39 A.3d 52 (Me. 2012).

[FN7] Associates of Philipsburg v. Hurwitz, 292 Pa. Super. 406, 437 A.2d 447 (1981).

[FN8] Daniel v. County of Santa Barbara, 288 F.3d 375 (9th Cir. 2002).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 153

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
4. Property Rights and Conveyances
a. In General

[Topic Summary Correlation Table References](#)

§ 154. Vendor and purchaser of realty; land contracts

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  148

Rights and obligations of vendors and purchasers and questions as to the validity and construction of contracts for the sale of land may be determined in proper cases by declaratory judgment proceedings.[1] However, declaratory judgment acts do not empower courts to give advisory opinions as to the marketability of land, merely to enable owners to allay the fears of prospective purchasers.[2] Moreover, where a vendor may secure the relief sought by an action against the purchaser for specific performance of the contract, the vendor is not entitled to obtain declaratory relief.[3]

[FN1] *Behrens v. Donnelly*, 236 F.R.D. 509 (D. Haw. 2006); *Ewurs v. Irving*, 344 N.W.2d 273 (Iowa Ct. App. 1983); *Maestro West Chelsea SPE LLC v. Pradera Realty Inc.*, 38 Misc. 3d 522, 954 N.Y.S.2d 819 (Sup 2012).

[FN2] *Lide v. Mears*, 231 N.C. 111, 56 S.E.2d 404 (1949).

[FN3] *Ace Realty, Inc. v. Looney*, 1974 OK 96, 531 P.2d 1377 (Okla. 1974).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 154

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
4. Property Rights and Conveyances
b. Leases
(1) Availability of Declaratory Judgment as to Leases

[Topic Summary Correlation Table References](#)

§ 155. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  181, 186, 187

Forms

[Am. Jur. Pleading and Practice Forms, Declaratory Judgments § 10](#) (Complaint, petition, or declaration—To determine rights under lease)

Declaratory judgments are generally available to determine the validity^[1] or construction and operation^[2] of a lease or sublease, where an actual controversy is present,^[3] and may include determinations as to an entitlement of renewal pursuant to local laws.^[4]

While declaratory relief may be particularly appropriate where no other adequate remedy is available,^[5] the remedy is unavailable where there is no case or controversy suitable for a declaratory judgment,^[6] where claimants have failed to exhaust the administrative remedies required by legislative enactment,^[7] or where a declaratory judgment will not terminate the controversy or avoid other inevitable litigation.^[8] A declaratory judgment may also be denied where the lease provisions are clear and unambiguous, and the claimants are not really in doubt as to their rights under the leases but are simply uncertain as to what course of action they should take to enforce their rights.^[9]

[FN1] *St. Regis Paper Co. v. Brown*, 247 Ga. 361, 276 S.E.2d 24 (1981); *DiGiorgio v. 1109-1113 Manhattan Ave. Partners, LLC*, 102 A.D.3d 725, 958 N.Y.S.2d 417 (2d Dep't 2013) (claim of illusory tenancy); *Shannon v. Barbee*, 2008 WL 802266 (Tex. App. Waco 2008).

[FN2] *Wincig v. Chock 574 5th Operating, Inc.*, 100 A.D.2d 775, 474 N.Y.S.2d 51 (1st Dep't 1984); *Bangen v. Bartelson*, 553 N.W.2d 754 (N.D. 1996); *Kurpjuweit v. Northwestern Development Co., Inc.*,

708 P.2d 39 (Wyo. 1985).

[FN3] Crest Commercial, Inc. v. Union-Hall, Inc., 104 Ill. App. 2d 110, 243 N.E.2d 652 (2d Dist. 1968)
; Wincig v. Chock 574 5th Operating, Inc., 100 A.D.2d 775, 474 N.Y.S.2d 51 (1st Dep't 1984).

[FN4] Cohen v. Berger, 153 A.D.2d 920, 545 N.Y.S.2d 728 (2d Dep't 1989).

[FN5] Elm Farm Foods Co. v. Cifrino, 328 Mass. 549, 105 N.E.2d 366 (1952).

[FN6] Stronko v. Bergin, 843 F. Supp. 827 (N.D. N.Y. 1994).

[FN7] DeLaura v. Beckett, 137 Cal. App. 4th 542, 40 Cal. Rptr. 3d 253 (1st Dist. 2006); Connecticut
Mobile Home Ass'n, Inc. v. Jensen's, Inc., 178 Conn. 586, 424 A.2d 285 (1979).

[FN8] Loveman v. Catonsville Nursing Home, Inc., 114 Md. App. 603, 691 A.2d 693 (1996).

[FN9] Kelner v. Woody, 399 So. 2d 35 (Fla. 3d DCA 1981).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All
rights reserved.

AMJUR DECLJUDS § 155

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
4. Property Rights and Conveyances
b. Leases
(1) Availability of Declaratory Judgment as to Leases

[Topic Summary Correlation Table References](#)

§ 156. Standing

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  [181](#), [186](#), [187](#)

The question of whether a party has sufficient standing may be raised in actions seeking declaratory judgment with respect to leases.[1] A party not having a sufficient interest in a disputed lease is not entitled to declaratory relief.[2] A month-to-month lease does not preclude a tenant from having standing to seek a declaratory judgment that the property is not in good repair and authorizing the tenant to withhold rent.[3]

[FN1] *Regency Towers of Naples, Inc. v. Arnold*, 350 So. 2d 18 (Fla. 2d DCA 1977); *Shannon v. Barbee*, 2008 WL 802266 (Tex. App. Waco 2008).

[FN2] *Bergen County v. Port of New York Authority*, 32 N.J. 303, 160 A.2d 811 (1960).

[FN3] *Evans v. Does*, 283 So. 2d 804 (La. Ct. App. 2d Cir. 1973).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 156

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
4. Property Rights and Conveyances
b. Leases
(1) Availability of Declaratory Judgment as to Leases

[Topic Summary Correlation Table References](#)

§ 157. Existence of another adequate remedy

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  [181](#), [186](#), [187](#)

While there is authority that the existence of another adequate remedy is sufficient to justify the refusal of a declaratory judgment in a suit based on a lease,^[1] in some circumstances, the existence of another remedy may not preclude the granting of declaratory relief though it may bear on the court's exercise of discretion in granting a declaratory judgment.^[2]

[FN1] [Toledo Museum of Art v. Ullin](#), 477 F. Supp. 2d 802 (N.D. Ohio 2006); [Savannah Theatres Co. v. First Federal Sav. & Loan Ass'n](#), 93 Ga. App. 487, 92 S.E.2d 217 (1956).

[FN2] [Kelner v. Woody](#), 399 So. 2d 35 (Fla. 3d DCA 1981).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 157

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
4. Property Rights and Conveyances
b. Leases
(2) Particular Applications

Topic Summary Correlation Table References

§ 158. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  181, 186, 187

Forms

[Am. Jur. Pleading and Practice Forms, Declaratory Judgments § 10](#) (Complaint, petition, or declaration—To determine rights under lease)

Seeking a declaratory judgment is proper as to rights and liabilities regarding a variety of matters that may arise in connection with leases, including:

- rents and royalties under leases[1]
- the use of leased premises[2]
- the right to repairs[3]
- the duration of a lease[4]
- the rights of parties where the building to be leased was not constructed in accordance with the terms set out in the lease[5]

[FN1] [Anderson Living Trust v. ConocoPhillips Co., LLC](#), 2013 WL 3456913 (D.N.M. 2013); [Appel v. Scott](#), 479 So. 2d 800 (Fla. 2d DCA 1985); [McNally v. Moser](#), 210 Md. 127, 122 A.2d 555, 60 A.L.R.2d 388 (1956).

[FN2] [Crest Commercial, Inc. v. Union-Hall, Inc.](#), 104 Ill. App. 2d 110, 243 N.E.2d 652 (2d Dist. 1968)

; *Lamana-Panno-Fallo, Inc. v. Heebe*, 352 So. 2d 1303 (La. Ct. App. 4th Cir. 1977).

[FN3] *Evans v. Does*, 283 So. 2d 804 (La. Ct. App. 2d Cir. 1973).

[FN4] *Milwaukee Hotel Wisconsin Co. v. Aldrich*, 265 Wis. 402, 62 N.W.2d 14 (1953).

[FN5] *F. Rosenberg Elevator Co. v. Goll*, 18 Wis. 2d 355, 118 N.W.2d 858 (1963).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 158

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
4. Property Rights and Conveyances
b. Leases
(2) Particular Applications

Topic Summary Correlation Table References

§ 159. Extension or renewal of lease

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  181, 186, 187

So long as a justiciable controversy is presented,[1] a declaratory judgment may be appropriate to determine matters relative to the extension of a lease[2] or the renewal of a lease.[3] Thus, where a property owner has already served notice on the lessee that the leases on the property in question can not be extended, the owner is entitled to a binding legal determination as to whether the lessee had the right, if the lessee contends, to extend the leases.[4]

[FN1] *New Bar Partnership v. Martin*, 729 S.E.2d 675 (N.C. Ct. App. 2012); *Garb-Ko, Inc. v. Bender-son*, 2013-Ohio-1249, 2013 WL 1303815 (Ohio Ct. App. 10th Dist. Franklin County 2013).

[FN2] *Leibowitz v. Bickford's Lunch System*, 241 N.Y. 489, 150 N.E. 525 (1926); *Greene v. Wiese*, 75 S.D. 515, 69 N.W.2d 325 (1955).

[FN3] *Aaron v. Woodcock*, 283 Pa. 33, 128 A. 665, 38 A.L.R. 1251 (1925); *Gillmor v. Gillmor*, 596 P.2d 645 (Utah 1979).

[FN4] *Gillmor v. Gillmor*, 596 P.2d 645 (Utah 1979).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 159

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
4. Property Rights and Conveyances
b. Leases
(2) Particular Applications

Topic Summary Correlation Table References

§ 160. Termination, expiration, or cancellation of lease

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  181, 186, 187

So long as a justiciable controversy is presented,[1] declaratory relief may be appropriate in cases involving the termination,[2] cancellation,[3] or expiration[4] of leases.

[FN1] *Kau v. City and County of Honolulu*, 104 Haw. 468, 92 P.3d 477 (2004); *Eve & Mike Pharmacy, Inc. v. Greenwich Pooh, LLC*, 107 A.D.3d 505, 968 N.Y.S.2d 22 (1st Dep't 2013) (an action involving notice of termination of a lease was mooted by withdrawal of the notice).

[FN2] *Makin v. Mack*, 336 A.2d 230 (Del. Ch. 1975); *Central Nebraska Public Power and Irrigation Dist. v. Jeffrey Lake Development, Inc.*, 282 Neb. 762, 810 N.W.2d 144 (2011).

[FN3] *Hyman v. Cohen*, 73 So. 2d 393 (Fla. 1954); *Wincig v. Chock 574 5th Operating, Inc.*, 100 A.D.2d 775, 474 N.Y.S.2d 51 (1st Dep't 1984).

[FN4] *McNally v. Moser*, 210 Md. 127, 122 A.2d 555, 60 A.L.R.2d 388 (1956).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 160

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
4. Property Rights and Conveyances
b. Leases
(2) Particular Applications

Topic Summary Correlation Table References

§ 161. Option to purchase

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  181, 186, 187

Forms

[Am. Jur. Pleading and Practice Forms, Declaratory Judgments § 11](#) (Complaint, petition, or declaration—To determine rights under lease and option to purchase)

Options to purchase in leases may be the subject of declaratory relief,^[1] such as to determine if a lessee's offer to purchase complies with the first refusal provisions of the lease.^[2] However, declaratory judgment may not be available to determine whether there exists a right of first refusal in a case where the contingent conditions of the cancellation of the lease and the sale of the property have not occurred and might never occur.^[3]

[FN1] *Dozier v. Troy Drive-In-Theatres, Inc.*, 265 Ala. 93, 89 So. 2d 537 (1956); *Ocean Petroleum, Co., Inc. v. Yanek*, 416 Md. 74, 5 A.3d 683 (2010) (construction of terms).

[FN2] *Coastal Bay Golf Club, Inc. v. Holbein*, 231 So. 2d 854 (Fla. 3d DCA 1970).

[FN3] *A. P. Simons Co. v. Julian*, 531 S.W.2d 451 (Tex. Civ. App. Eastland 1975).

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
4. Property Rights and Conveyances
b. Leases
(2) Particular Applications

Topic Summary Correlation Table References

§ 162. Possession

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  181, 186, 187

Declaratory judgment is appropriate to determine questions of possession arising under leases,[1] including a question as to who is entitled to the possession of the property at the conclusion of the lease.[2] Appropriate matters for declaratory judgment may include a lessee's claims of entitlement to continued possession because of the lessor's failure to give timely statutory notice of the termination of the lease[3] or as to relative rights of tenants claiming to have been constructively evicted.[4]

Declaratory relief may be denied, however, where an action involving a lease is really one for breach of contract,[5] and the court may refuse to make a determination as to a landlord's right to possession where the tenant has already vacated.[6]

[FN1] *Metzel v. Canada Dry Corp.*, 125 Ga. App. 460, 188 S.E.2d 175 (1972); *Schmitz v. Sondag*, 334 N.W.2d 362 (Iowa Ct. App. 1983); *Snyder v. Sperry & Hutchinson Co.*, 368 Mass. 433, 333 N.E.2d 421 (1975).

[FN2] *Metzel v. Canada Dry Corp.*, 125 Ga. App. 460, 188 S.E.2d 175 (1972).

[FN3] *Schmitz v. Sondag*, 334 N.W.2d 362 (Iowa Ct. App. 1983).

[FN4] *Stevan v. Brown*, 54 Md. App. 235, 458 A.2d 466 (1983).

[FN5] *Love Mortg. Properties, Inc. v. Horen*, 639 S.W.2d 839 (Mo. Ct. App. E.D. 1982).

[FN6] *Love Mortg. Properties, Inc. v. Horen*, 639 S.W.2d 839 (Mo. Ct. App. E.D. 1982).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 162

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
4. Property Rights and Conveyances
b. Leases
(2) Particular Applications

Topic Summary Correlation Table References

§ 163. Subletting and assignment of leases

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  181, 186, 187

So long as a justiciable controversy is presented,[1] a declaratory judgment may be appropriate to determine questions relative to the subletting of premises and the assignment of leases.[2] Thus, a tenant who has covenanted not to sublet without the landlord's consent, which, however, is not to be unreasonably withheld, may seek a declaratory judgment that such consent is indeed being unreasonably withheld.[3]

[FN1] *Garb-Ko, Inc. v. Benderson*, 2013-Ohio-1249, 2013 WL 1303815 (Ohio Ct. App. 10th Dist. Franklin County 2013).

[FN2] *University Shopping Center, Inc. v. Anderson*, 250 So. 2d 648 (Fla. 1st DCA 1971); *Hardware Center, Inc. v. Parkedge Corp.*, 618 S.W.2d 689 (Mo. Ct. App. E.D. 1981).

[FN3] *First Nat. Bank of DeKalb County v. Centennial Equities Corp.*, 245 Ga. 121, 263 S.E.2d 155 (1980); *Allen v. Carsted Realty Corporation*, 223 A.D. 869, 229 N.Y.S. 829 (1st Dep't 1928).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 163

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
4. Property Rights and Conveyances
b. Leases
(2) Particular Applications

Topic Summary Correlation Table References

§ 164. Mining, oil and gas leases

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  187

So long as a justiciable controversy exists,[1] declaratory judgment may be available with respect to mining leases[2] and oil and gas leases,[3] including determinations as to the appropriate method to ascertain rights to proportionate shares of production.[4]

[FN1] *Ultra Resources, Inc. v. Hartman*, 2010 WY 36, 226 P.3d 889 (Wyo. 2010) (oil and gas leases).

[FN2] *Broomhall v. Edgemont Min. Co.*, 139 Colo. 496, 340 P.2d 869 (1959); *Alumet v. Bear Lake Grazing Co.*, 112 Idaho 441, 732 P.2d 679 (Ct. App. 1986); *Belden v. Tri-Star Producing Co., Inc.*, 106 Ill. App. 3d 192, 62 Ill. Dec. 129, 435 N.E.2d 927 (5th Dist. 1982).

[FN3] *Wessely Energy Corp. v. Arkansas Louisiana Gas Co.*, 438 F. Supp. 360 (W.D. Okla. 1977), judgment aff'd and remanded on other grounds, 593 F.2d 917 (10th Cir. 1979).

[FN4] *Desormeaux v. Inexco Oil Co.*, 277 So. 2d 218 (La. Ct. App. 3d Cir. 1973).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 164

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
5. Other Particular Matters

[Topic Summary Correlation Table References](#)

§ 165. Associations and clubs

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  81, 91

On the ground that the rules and regulations by which an unincorporated organization is governed constitute a contract between its members, such rules and regulations may be subject to construction by a court in a declaratory judgment action if there is an actual controversy with respect to the rules and regulations.[1] While an action for declaratory judgment may lie to determine the plaintiff's right to the position of chairman of a political party unit,[2] the courts are reluctant to interfere in the internal affairs of a membership corporation unless property rights are involved.[3]

[FN1] *Francis v. Scott*, 260 Ala. 595, 72 So. 2d 98 (1954); *Watkins v. Clark*, 85 Misc. 2d 727, 380 N.Y.S.2d 604 (Sup 1976).

As to actions by and against associations or clubs, generally, see *Am. Jur. 2d, Associations and Clubs* §§ 49 to 60.

[FN2] *Shelly v. Brewer*, 68 So. 2d 573 (Fla. 1953).

[FN3] *Taite v. Bradley*, 151 So. 2d 474 (Fla. 1st DCA 1963).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 165

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
5. Other Particular Matters

Topic Summary Correlation Table References

§ 166. Bonds

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 211

A declaratory judgment may be granted to determine the validity of bonds,[1] but the remedy is not available where no actual controversy exists[2] as where the issue presented is not ripe for review.[3] Among issues which may be proper for a declaratory judgment proceeding is the power of a city to issue additional bonds which would be payable before some bonds issued earlier[4] or the refusal to issue bonds authorized by the legislature.[5]

A declaratory judgment will be refused where a specific statutory remedy exists to test the validity of bonds.[6]

[FN1] *St. Paul Fire & Marine Ins. Co. v. Town of Monongah*, W. Va., 209 F. Supp. 514 (N.D. W. Va. 1962); *Harris v. Union Elec. Co.*, 622 S.W.2d 239 (Mo. Ct. App. E.D. 1981).

[FN2] *Financial Guar. Ins. Co. v. City of Fayetteville*, Ark., 943 F.2d 925 (8th Cir. 1991); *Dieck v. Unified School Dist. of Antigo*, 165 Wis. 2d 458, 477 N.W.2d 613, 71 Ed. Law Rep. 908 (1991).

[FN3] *Citizens for Responsible Choices v. City of Shenandoah*, 686 N.W.2d 470 (Iowa 2004).

[FN4] *Miehls v. City of Independence*, 249 Iowa 1022, 88 N.W.2d 50 (1958).

[FN5] *Convention Center Authority v. Anzai*, 78 Haw. 157, 890 P.2d 1197 (1995).

[FN6] *Bessemer Properties v. City of Opalocka*, 74 So. 2d 296 (Fla. 1954).

AMJUR DECLJUDS § 166

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
5. Other Particular Matters

[Topic Summary Correlation Table References](#)

§ 167. Corporations

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  96, 125

Matters dealing with the rights and status of corporations and their stockholders and the relation between the one and the other may be the subject matter of actions for declaratory judgments.[1] For instance, a declaratory action may be appropriate in matters involving an initial public offering.[2]

However, the availability of other proceedings may preclude the availability of a declaratory judgment.[3] For example, a shareholder's remedy on a breach of contract claim will preclude a claim for declaratory judgment.[4] Also, declaratory judgment is not available where the controversy is moot[5] or where relief would be futile, resulting in a judicial declaration with no practical effect.[6]

[FN1] *Kidder, Peabody & Co., Inc. v. Maxus Energy Corp.*, 925 F.2d 556 (2d Cir. 1991); *Hungerford & Terry, Inc. v. Geschwindt*, 24 N.J. Super. 385, 94 A.2d 540 (Ch. Div. 1953), judgment aff'd, 27 N.J. Super. 515, 99 A.2d 666 (App. Div. 1953); *Marron v. Wood*, 1951-NMSC-058, 55 N.M. 367, 233 P.2d 1051 (1951).

[FN2] *A.S. Goldmen & Co., Inc. v. New Jersey Bureau of Securities*, 163 F.3d 780 (3d Cir. 1999).

[FN3] *Trefethen v. Amazeen*, 93 N.H. 110, 36 A.2d 266 (1944).

[FN4] *Graham v. Goodman*, 850 S.W.2d 351 (Mo. 1993).

[FN5] *Gordon Grocery, Inc. v. Associated Wholesalers, Inc.*, 478 F. Supp. 2d 838 (D. Md. 2007).

[FN6] *MathStar, Inc. v. Tiberius Capital II, LLC*, 712 F. Supp. 2d 870 (D. Minn. 2010) (declaration that corporation had committed securities fraud).

rights reserved.

AMJUR DECLJUDS § 167

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
5. Other Particular Matters

Topic Summary Correlation Table References

§ 168. Corporations—Questions regarding stock

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 96, 125

Questions arising out of the issue and transfer of stock may be determined in declaratory judgment proceedings.[1] A declaratory judgment may be used to determine ownership of stock.[2] The rights of stockholders to dividends may also be determined in a declaratory judgment action,[3] but such a determination will not be made in the absence of an actual controversy.[4]

[FN1] *East Coalinga Oil Fields Corp. v. Robinson*, 86 Cal. App. 2d 161, 194 P.2d 561 (3d Dist. 1948); *First Nat. Bank of Canton v. Shanks*, 34 Ohio Op. 359, 73 N.E.2d 93 (C.P. 1945).

[FN2] *Beacher v. Estate of Beacher*, 756 F. Supp. 2d 254 (E.D. N.Y. 2010).

[FN3] *Lockwood v. General Abrasive Co.*, 210 A.D. 141, 205 N.Y.S. 511 (4th Dep't 1924), *aff'd*, 240 N.Y. 592, 148 N.E. 719 (1925).

[FN4] *Sanders v. Cuba R. Co.*, 21 N.J. 78, 120 A.2d 849 (1956).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 168

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
5. Other Particular Matters

Topic Summary Correlation Table References

§ 169. Water rights

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 185

Controversies involving water rights may be adjudicated in declaratory judgment actions[1] so long as the issues are ripe for review,[2] and a declaratory judgment would resolve the underlying dispute.[3] Thus, the rights and liabilities under a covenant in a deed relating to a drainage canal for the benefit of land conveyed may be determined in a declaratory judgment action.[4]

[FN1] [Corrigans v. Sebastian River Drainage Dist.](#), 223 So. 2d 57 (Fla. 4th DCA 1969); [Whitmore v. Murray City](#), 107 Utah 445, 154 P.2d 748 (1944); [Barber v. City of Douglas](#), 931 P.2d 948 (Wyo. 1997).

[FN2] [Sierra Club v. Yeutter](#), 911 F.2d 1405 (10th Cir. 1990).

[FN3] [Otwell v. Alabama Power Co.](#), 2013 WL 1966115 (N.D. Ala. 2013).

[FN4] [Walker v. Phelps](#), 202 N.C. 344, 162 S.E. 727 (1932).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 169

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
5. Other Particular Matters

[Topic Summary Correlation Table References](#)

§ 170. Husband and wife; marital status and divorce or separation

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 92.1, 149

Forms

[Am. Jur. Pleading and Practice Forms, Declaratory Judgments § 9](#) (Complaint, petition, or declaration—To determine marital status—Invalid foreign divorce decree obtained by husband)

Declaratory judgments may be used to determine marital status and rights incident thereto;^[1] however, an action for declaratory judgment cannot be used by a party to obtain a divorce or annulment^[2] or to entertain actions for declaratory relief where the State has no interest or concern with the marital status questioned.^[3] Matters not ripe for adjudication are not appropriate for declaratory judgment,^[4] and declaratory judgment is not available where the requested relief would not terminate the uncertainty or controversy giving rise to the proceeding.^[5]

[FN1] *In re Marriage of Best*, 228 Ill. 2d 107, 319 Ill. Dec. 815, 886 N.E.2d 939 (2008) (dissolution); *Young v. Wehmeier*, 369 Mich. 110, 119 N.W.2d 642, 92 A.L.R.2d 1098 (1963); *Denkman v. Denkman*, 255 A.D. 496, 8 N.Y.S.2d 228 (1st Dep't 1938).

[FN2] *Melnick v. Melnick*, 154 Pa. Super. 481, 36 A.2d 235 (1944).

[FN3] *Engel v. Engel*, 275 A.D. 14, 87 N.Y.S.2d 1 (1st Dep't 1949).

[FN4] *Brause v. State, Dept. of Health & Social Services*, 21 P.3d 357 (Alaska 2001) (same sex partners denied declaratory judgment as to statute rendering marriage invalid).

[FN5] *Donaldson v. State*, 2012 MT 288, 367 Mont. 228, 292 P.3d 364 (2012).

rights reserved.

AMJUR DECLJUDS § 170

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
5. Other Particular Matters

[Topic Summary Correlation Table References](#)

§ 171. Husband and wife; marital status and divorce or separation—Antenuptial and separation agreements; property settlements

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 149

A declaratory judgment of the spouses' rights under a premarital agreement is proper if there is an actual controversy and if entry of a declaratory judgment would terminate some part of that controversy.[1]

The validity of a separation agreement may be determined by filing an action for declaratory relief[2] even without a filing for divorce.[3] The court may determine the rights of the parties under an agreed order incorporating a partial marital settlement agreement.[4] However, a declaration will be refused where a dispute over a property settlement could have been settled by petitioning for the amount due under a provision of the divorce decree.[5]

[FN1] *In re Marriage of Best*, 228 Ill. 2d 107, 319 Ill. Dec. 815, 886 N.E.2d 939 (2008).

[FN2] *Putnam v. Putnam*, 51 Cal. App. 2d 696, 125 P.2d 525 (1st Dist. 1942); *Beach v. Beach*, 57 Ohio App. 294, 10 Ohio Op. 460, 26 Ohio L. Abs. 220, 13 N.E.2d 581 (5th Dist. Fairfield County 1937).

[FN3] *Young v. Anne Arundel County*, 146 Md. App. 526, 807 A.2d 651 (2002).

[FN4] *Stern v. Stern*, 105 Ill. App. 3d 805, 61 Ill. Dec. 567, 434 N.E.2d 1164 (2d Dist. 1982).

[FN5] *Glassford v. Glassford*, 76 Ariz. 220, 262 P.2d 382 (1953).

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
5. Other Particular Matters

[Topic Summary Correlation Table References](#)

§ 172. Husband and wife; marital status and divorce or separation—Declarations as to foreign divorce decrees

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  93

Forms

[Am. Jur. Pleading and Practice Forms, Declaratory Judgments § 9](#) (Complaint, petition, or declaration—To determine marital status—Invalid foreign divorce decree obtained by husband)

A declaratory judgment action may appropriately be brought to determine the validity of decrees affecting marital status or obligations which have been obtained in another state,[1] or country,[2] particularly where the party obtaining the divorce has gone through another marriage ceremony.[3] There must be a justiciable controversy to support declaratory relief.[4]

[FN1] [Spicer v. Spicer](#), 62 So. 3d 798 (La. Ct. App. 1st Cir. 2011) (enforceability of Illinois judgment modifying child support provisions in divorce decree); [Hogan v. Hogan](#), 320 Mass. 658, 70 N.E.2d 821 (1947).

[FN2] [Rosenbaum v. Rosenbaum](#), 309 N.Y. 371, 130 N.E.2d 902, 54 A.L.R.2d 1232 (1955); [Rosenwald v. Rosenwald](#), 272 A.D. 1027, 73 N.Y.S.2d 710 (2d Dep't 1947).

[FN3] [Lowe v. Lowe](#), 265 N.Y. 197, 192 N.E. 291 (1934); [Melnick v. Melnick](#), 147 Pa. Super. 564, 25 A.2d 111 (1942).

[FN4] [Gardner v. Gardner](#), 233 F.2d 23 (D.C. Cir. 1956); [Colby v. Colby](#), 120 So. 2d 797 (Fla. 2d DCA 1960) (previous decree clearly established marital status); [Colby v. Colby](#), 78 Nev. 150, 369 P.2d 1019 (1962).

rights reserved.

AMJUR DECLJUDS § 172

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
5. Other Particular Matters

[Topic Summary Correlation Table References](#)

§ 173. Mortgages and trust deeds

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 189

The validity and construction of mortgages and deeds of trust and the rights and liabilities connected therewith may be determined in declaratory judgment proceedings.[1] Declaratory judgment proceedings may also be utilized to determine priorities between mortgages.[2] Declaratory judgments with regard to such matters are not available, however, where there is no actual or justiciable controversy[3] or where the dispute is based on the occurrence of future events.[4]

[FN1] *Contestabile v. Business Development Corp. of Georgia*, 259 Ga. 783, 387 S.E.2d 137 (1990); *Dahlin v. Alfredo*, 12 A.D.2d 798, 210 N.Y.S.2d 191 (2d Dep't 1961), judgment aff'd, 11 N.Y.2d 804, 227 N.Y.S.2d 250, 181 N.E.2d 851 (1962).

[FN2] *Grambo v. South Side Bank & Trust Co.*, 141 Pa. Super. 176, 14 A.2d 925 (1940); *Bank of Augusta v. Satcher Motor Co.*, 249 S.C. 53, 152 S.E.2d 676 (1967).

[FN3] *Pittenger v. Home Sav. and Loan Ass'n of Los Angeles*, 166 Cal. App. 2d 32, 332 P.2d 399 (2d Dist. 1958); *Yeager v. Yeager*, 746 S.E.2d 427 (N.C. Ct. App. 2013) (action moot).

[FN4] *Luken v. BancBoston Mortg. Corp.*, 580 So. 2d 578 (Ala. 1991).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 173

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
5. Other Particular Matters

[Topic Summary Correlation Table References](#)

§ 174. Parentage; status and custody of child

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  94, 244

Except where the court would be deciding an abstract, hypothetical, or contingent question,[1] a declaratory judgment action is applicable to determine the parentage of a child and the status of a child with a relation to an alleged natural or adoptive parent[2] or grandparent,[3] including a determination as to whether an individual is the natural father of an illegitimate child[4] for the purposes of determining the individual's rights as to custody, visitation, care, and maintenance of the child.[5]

[FN1] [Matthews v. District of Columbia](#), 875 A.2d 650 (D.C. 2005).

[FN2] [K.D.R. v. D.E.S.](#), 637 S.W.2d 691 (Mo. 1982); [C— S— v. J— W—](#), 514 S.W.2d 848 (Mo. Ct. App. 1974); [State ex rel. Anonymous v. Murphy](#), 354 S.W.2d 42 (Mo. Ct. App. 1962) (action to establish that defendant was natural father of petitioner); [Slawek v. Stroh](#), 62 Wis. 2d 295, 215 N.W.2d 9 (1974).

[FN3] [Kendrick v. Everheart](#), 390 So. 2d 53 (Fla. 1980) (custody as between parent and grandparent); [Powers v. Steele](#), 394 Mass. 306, 475 N.E.2d 395 (1985).

[FN4] [Kendrick v. Everheart](#), 390 So. 2d 53 (Fla. 1980).

[FN5] [Slawek v. Stroh](#), 62 Wis. 2d 295, 215 N.W.2d 9 (1974).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 174

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
5. Other Particular Matters

[Topic Summary Correlation Table References](#)

§ 175. Partnerships

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 95, 142

Proper subjects for determination by a declaratory judgment include the existence of a partnership,[1] as well as the construction of a partnership agreement[2] and interests in limited partnerships.[3] A declaration that the defendant has no interest in a partnership presents a justiciable controversy.[4] An action also may be maintained to declare that a decedent was a partner in a business.[5]

Declaratory judgment may be used to enforce partnership agreements,[6] to have a partnership declared the owner of a parcel of property bought by a partner in his or her own name for the benefit of the partnership,[7] and to determine whether an offer to purchase an interest in the partnership was a bona fide offer so as to trigger a partner's right of first refusal under the partnership agreement.[8]

Observation:

The declaratory judgment procedure is not to be used as an instrument of procedural fencing either to secure delay or to choose a forum.[9]

[FN1] *Manacher v. Central Coal Co.*, 125 N.Y.S.2d 260 (Sup 1953); *In re Dahl's Estate*, 196 Or. 249, 248 P.2d 700, 32 A.L.R.2d 965 (1952).

[FN2] *Zimmer v. Gorelnik*, 42 Cal. App. 2d 440, 109 P.2d 34 (1st Dist. 1941); *In re Dahl's Estate*, 196 Or. 249, 248 P.2d 700, 32 A.L.R.2d 965 (1952).

[FN3] *Allied Inv. Corp. v. Jasen*, 354 Md. 547, 731 A.2d 957 (1999) (action pursued by lenders as to a guarantor's interest in a limited partnership).

[FN4] *Moffitt v. Fitzpatrick*, 270 Ala. 676, 121 So. 2d 99 (1960).

[FN5] *Kontonickas v. Kontonickas*, 140 N.E.2d 903 (Ohio Ct. App. 1st Dist. Hamilton County 1956).

[FN6] *St. James Plaza v. Notey*, 95 A.D.2d 804, 463 N.Y.S.2d 523 (2d Dep't 1983).

[FN7] *Decatur-St. Louis Combined Equity Properties, Inc. Venture v. Abercrombie*, 411 So. 2d 677 (La. Ct. App. 4th Cir. 1982).

[FN8] *Lede v. Aycock*, 630 S.W.2d 669 (Tex. App. Houston 14th Dist. 1981), writ refused n.r.e., (Dec. 31, 1981).

[FN9] *Hoffman Family, L.L.C. v. Mill Two Associates Partnership*, 259 Va. 685, 529 S.E.2d 318 (2000).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 175

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
5. Other Particular Matters

[Topic Summary Correlation Table References](#)

§ 176. Professions, occupations, and businesses

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑95

Declaratory judgments are generally available to determine questions arising out of the regulation and practice of various professions, occupations, and businesses,[1] including the right to engage in a particular profession or occupation,[2] as well as particular requirements in connection with an occupation.[3]

However, one who has not followed the administrative procedure to establish a right to practice a profession cannot maintain a declaratory judgment action,[4] and particular issues for which an alternative procedure is specified may not be an appropriate matter for declaratory judgment.[5] Also, declaratory relief may be denied if no practical consequences will result from a declaratory judgment.[6]

[FN1] *Morr-Fitz, Inc. v. Blagojevich*, 231 Ill. 2d 474, 327 Ill. Dec. 45, 901 N.E.2d 373 (2008) (pharmacists); *Missouri Ass'n of Nurse Anesthetists, Inc. v. State Bd. of Registration for Healing Arts*, 343 S.W.3d 348 (Mo. 2011).

[FN2] *Watson v. Centro Espanol De Tampa*, 158 Fla. 796, 30 So. 2d 288 (1947); *Brown v. Foley*, 158 Fla. 734, 29 So. 2d 870 (1947); *Massachusetts Chiropractic Laymen's Ass'n v. Attorney General*, 333 Mass. 179, 130 N.E.2d 101 (1955).

[FN3] *Billis v. City of Toledo*, 63 Ohio App. 2d 188, 17 Ohio Op. 3d 381, 410 N.E.2d 767 (6th Dist. Lucas County 1977) (psychological examination for police officer).

[FN4] *Morrison v. Plotkin*, 77 So. 2d 254 (Fla. 1955).

[FN5] *Heiberger v. Clark*, 148 Conn. 177, 169 A.2d 652 (1961) (as to admission to state bar association).

[FN6] *Campbell v. Greisberger*, 80 F.3d 703, 15 A.D.D. 914 (2d Cir. 1996) (challenged questions in bar

admission questionnaire no longer used).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 176

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
5. Other Particular Matters

[Topic Summary Correlation Table References](#)

§ 177. Religious organizations and controversies

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 81, 91

Where a church dispute involves primarily questions of property rights, declaratory relief may be obtained even if ecclesiastical matters are incidentally involved.[1] Thus, a declaration may be obtained as to the validity of a merger of various religious bodies into one and to the right of the new organization to succeed to the rights and properties of the merged organizations.[2]

Declaratory relief has generally been denied to determine questions arising out of the expulsion of church members on the ground that the determination of such question rests on the interpretation of an article of faith,[3] but particular circumstances may allow a declaratory judgment to proceed.[4] A church organization or similar group may be required to exhaust all remedies available within the organization before applying to the courts for relief.[5]

Observation:

It has been said that courts relax the ripeness requirement in declaratory judgment actions involving a challenge to the validity of an administrative rule when plaintiffs are forced to comply with the rule or else compromise their rights to the free exercise of religion under the First Amendment.[6]

[FN1] *Providence Baptist Church of San Francisco v. Superior Court in and for City and County of San Francisco*, 40 Cal. 2d 55, 251 P.2d 10 (1952).

[FN2] *Purcell v. Summers*, 126 F.2d 390 (C.C.A. 4th Cir. 1942).

[FN3] *Stewart v. Jarriel*, 206 Ga. 855, 59 S.E.2d 368 (1950).

[FN4] *State ex rel. Nelson v. Ellis*, 140 So. 2d 194 (La. Ct. App. 4th Cir. 1962).

[FN5] *United Pentecostal Church of Louisville v. Milam*, 527 P.2d 1171 (Colo. App. 1974).

[FN6] *Morr-Fitz, Inc. v. Blagojevich*, 231 Ill. 2d 474, 327 Ill. Dec. 45, 901 N.E.2d 373 (2008).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 177

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
5. Other Particular Matters

[Topic Summary Correlation Table References](#)

§ 178. Unemployment compensation

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 126

Declaratory judgments may be granted in cases brought by employers to determine either the constitutionality or the coverage of a state unemployment compensation act.[1] Declaratory judgment actions may be brought to determine the status of certain individuals as to being independent contractors or employees within the contemplation of an unemployment compensation act,[2] or qualification as to exceptions,[3] and determinations as to what may constitute wages.[4] Where a statute so provides, a declaratory judgment action may be brought to determine whether an appeals board decision accords with the law which would govern were the rule announced articulated as a regulation.[5]

Declaratory relief has been denied in unemployment compensation cases on grounds that the administrative procedure is exclusive,[6] or must first be exhausted,[7] or other adequate remedies are available.[8]

In accordance with the general rules applicable to matters in which a declaratory judgment may be rendered, an actual controversy as to the unemployment compensation matter must exist before declaratory relief is available,[9] and such a declaratory judgment cannot be based on facts that may arise from future occurrences.[10] A plaintiff must have a substantial, direct, and immediate interest in order to have standing to bring a declaratory judgment action challenging a provision of an unemployment compensation law.[11]

[FN1] *Bennett v. Lopeman*, 598 F. Supp. 774 (N.D. Ohio 1984); *Gonzalez v. Texas Employment Commission*, 486 F. Supp. 278 (S.D. Tex. 1977), *aff'd*, 614 F.2d 1295 (5th Cir. 1980).

[FN2] *Weiss-Lawrence, Inc. v. Riley*, 100 N.H. 41, 118 A.2d 731 (1955).

[FN3] *American Life & Acc. Ins. Co. of Ky. v. Jones*, 152 Ohio St. 287, 40 Ohio Op. 326, 89 N.E.2d 301, 14 A.L.R.2d 815 (1949).

[FN4] *Campbell v. Texas Employment Commission*, 598 S.W.2d 40 (Tex. Civ. App. Austin 1980).

[FN5] *Messenger Courier Ass'n of Americas v. California Unemployment Ins. Appeals Bd.*, 175 Cal. App. 4th 1074, 96 Cal. Rptr. 3d 797 (4th Dist. 2009).

[FN6] *Stearns Coal & Lumber Co. v. Unemployment Compensation Com'n of Kentucky*, 285 Ky. 249, 147 S.W.2d 382 (1941); *Mulhausen v. Bates*, 9 Wash. 2d 264, 114 P.2d 995 (1941).

[FN7] *Seiz v. Citizens Pure Ice Co.*, 207 Minn. 277, 290 N.W. 802 (1940).

[FN8] *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293, 63 S. Ct. 1070, 87 L. Ed. 1407 (1943).

[FN9] *Idaho Mut. Ben. Ass'n v. Robison*, 65 Idaho 793, 154 P.2d 156 (1944); *American Life & Acc. Ins. Co. of Ky. v. Jones*, 152 Ohio St. 287, 40 Ohio Op. 326, 89 N.E.2d 301, 14 A.L.R.2d 815 (1949).

As to justiciability in declaratory actions, generally, see §§ 21 to 35.

[FN10] *Seiz v. Citizens Pure Ice Co.*, 207 Minn. 277, 290 N.W. 802 (1940).

[FN11] *Piunti v. Com., Dept. of Labor and Industry, Unemployment Compensation Bd. of Review*, 900 A.2d 1017 (Pa. Commw. Ct. 2006).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 178

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

III. Matters as to Which Rendered
D. Particular Matters
5. Other Particular Matters

[Topic Summary Correlation Table References](#)

§ 179. Workers' compensation

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 85, 126, 172

While the rights, duties, and liabilities of parties under a workers' compensation act may be considered in a declaratory judgment proceeding,[1] declaratory relief may be denied on the ground that the statute gives the compensation board exclusive jurisdiction to determine the respective rights of the parties[2] or because administrative remedies have not been exhausted.[3] However, in some instances, the exhaustion of administrative remedies is not a prerequisite to proceeding on a declaratory judgment, such as where courts may have concurrent jurisdiction[4] or where the relief sought is not within the authority of the administrative body.[5] Where the other prerequisites to a declaratory judgment action have been satisfied, an action may also be brought for a declaration as to the constitutionality of a workers' compensation statute[6] or the validity of implementing regulations.[7]

If declaratory relief is to be available, the controversy involving workers' compensation must be a present one.[8] Federal jurisdiction over a declaratory judgment action regarding workers' compensation may be lacking where the matter is a question of state law,[9] or relief in the federal court may be otherwise denied where the state forum is proper and adequate.[10]

[FN1] *Martinez v. Scanlan*, 582 So. 2d 1167 (Fla. 1991); *Warren v. Mississippi Workers' Compensation Com'n*, 700 So. 2d 608 (Miss. 1997); *Bituminous Cas. Corp. v. Deyle*, 234 Neb. 537, 451 N.W.2d 910 (1990); *Goedert ex rel. Wolfe v. State ex rel. Wyoming Workers' Safety and Compensation Div.*, 991 P.2d 1225 (Wyo. 1999).

[FN2] *Coal Operators Cas. Co. v. Abshire*, 111 F. Supp. 24 (E.D. Ky. 1953); *Hirsch v. Workmen's Compensation Bd.*, 1 A.D.2d 873, 149 N.Y.S.2d 632 (1st Dep't 1956), judgment aff'd, 3 N.Y.2d 747, 163 N.Y.S.2d 978, 143 N.E.2d 523 (1957); *Cox v. Pitt County Transp. Co.*, 259 N.C. 38, 129 S.E.2d 589 (1963).

[FN3] *Ragon v. Great Am. Indem. Co.*, 224 Ark. 387, 273 S.W.2d 524 (1954); *Tooley v. Alm*, 515 N.W.2d 137 (N.D. 1994).

[FN4] *Employers Mut. Companies v. Skilling*, 163 Ill. 2d 284, 206 Ill. Dec. 110, 644 N.E.2d 1163 (1994).

[FN5] *Warren v. Mississippi Workers' Compensation Com'n*, 700 So. 2d 608 (Miss. 1997) (challenge to constitutionality of workers' compensation system).

[FN6] *Missouri Alliance for Retired Americans v. Department of Labor and Indus. Relations*, 277 S.W.3d 670 (Mo. 2009) (amendments); *Oklahoma State Chiropractic Independent Physicians Ass'n v. Fallin*, 2011 OK 102, 290 P.3d 1 (Okla. 2011); *Travelers Indem. Co. v. Wallis*, 176 Vt. 167, 2003 VT 103, 845 A.2d 316 (2003).

[FN7] *Nevada Attorney for Injured Workers v. Nevada Self-Insurers Ass'n*, 225 P.3d 1265, 126 Nev. Adv. Op. No. 7 (Nev. 2010).

[FN8] *Merritt-Chapman & Scott Corp. v. Frazier*, 92 Ariz. 136, 375 P.2d 18 (1962).

[FN9] *Ceres Terminals, Inc. v. Industrial Com'n of Illinois*, 53 F.3d 183 (7th Cir. 1995).

[FN10] *Odeco Oil and Gas Co., Drilling Div. v. Bonnette*, 4 F.3d 401 (5th Cir. 1993).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 179

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
A. In General

[Topic Summary Correlation Table](#)


Research References

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  [251](#) to [254](#)

A.L.R. Library

A.L.R. Index, Declaratory Judgments or Relief

West's A.L.R. Digest, Declaratory Judgments  [251](#) to [254](#)

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS IV A REF

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
A. In General

[Topic Summary Correlation Table References](#)

§ 180. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 251 to 254

An action for declaratory judgment is a statutory action.[1] A suit for declaratory judgment is an ordinary action, not a summary proceeding.[2]

While the declaratory judgment procedure may not be utilized merely to secure advice on the law, to establish abstract principles of law, or to secure the construction of a statute if the effect of that construction will not affect the plaintiff's personal rights, it may be employed in a justiciable controversy where the interests are adverse, where there is an actual bona fide and substantial question or issue in dispute or substantial uncertainty of legal relations which requires settlement, and where all persons having an interest in the subject matter of the complaint are parties to the action or have reasonable notice thereof.[3]

Observation:

The prerequisites for bringing a declaratory judgment action include (1) an actual controversy; (2) standing; (3) joinder of all necessary parties; and (4) the exhaustion of available administrative remedies.[4] The elements of a declaratory judgment action are: (1) a plaintiff having a legal, tangible interest; (2) a defendant having an opposing interest; and (3) the existence of an actual controversy between the parties concerning such interests.[5] Declaratory relief will lie where: (1) there is a justiciable controversy; (2) it exists between parties with adverse interests; (3) those seeking relief have a legal interest in the controversy; and (4) the issues involved are ripe for a decision.[6]

A claim for declaratory relief requires a trial on the merits where each party has an opportunity to present evidence in a form other than verified pleadings and affidavits.[7]

It has sometimes been said that a declaratory judgment statute is mandatory[8] and that a court lacks jurisdiction to render declaratory relief if the statutory requirements are not met.[9] However, in some jurisdictions, the view has been expressed that the statutory procedure for obtaining a declaratory judgment does not impose a mandatory duty to use that procedure.[10]

Although declaratory judgment acts deal with remedies and practice rather than with substantive rights,[11] the rules of procedure which apply in ordinary actions also apply in proceedings for declaratory judgments.[12] Thus, the declaratory judgment acts do not abrogate the general rules of pleading and evidence.[13]

A declaratory judgment action may be brought standing alone or with the substantive claim seeking recompense.[14]

The courts are limited in granting declaratory judgments and cannot render a judgment if there is a factual question concerning the evidence.[15]

[FN1] *Bania v. Town of New Hartford*, 138 Conn. 172, 83 A.2d 165 (1951).

[FN2] *Dale v. Louisiana Secretary of State*, 971 So. 2d 1136 (La. Ct. App. 1st Cir. 2007).

[FN3] *New London County Mut. Ins. Co. v. Nantes*, 303 Conn. 737, 36 A.3d 224 (2012).

[FN4] *Town of Marion v. Massachusetts Housing Finance Agency*, 68 Mass. App. Ct. 208, 861 N.E.2d 468 (2007).

[FN5] *Seip v. Rogers Raw Materials Fund, L.P.*, 408 Ill. App. 3d 434, 350 Ill. Dec. 348, 948 N.E.2d 628 (1st Dist. 2011).

[FN6] *McGhee v. Arkansas State Bd. of Collection Agencies*, 375 Ark. 52, 289 S.W.3d 18 (2008).

[FN7] *Apasra Properties, LLC v. City of New Orleans*, 31 So. 3d 615 (La. Ct. App. 4th Cir. 2010).

[FN8] *Cicco v. Stockmaster*, 89 Ohio St. 3d 95, 2000-Ohio-434, 728 N.E.2d 1066 (2000).

[FN9] § 184.

[FN10] *Marcotte v. Timberlane/Hampstead School Dist.*, 143 N.H. 331, 733 A.2d 394, 136 Ed. Law Rep. 914 (1999); *Sanderson v. Ohio Edison Co.*, 69 Ohio St. 3d 582, 1994-Ohio-379, 635 N.E.2d 19 (1994).

[FN11] As to the purpose of declaratory judgment acts, generally, see § 5.

[FN12] *Dubuque Policemen's Protective Ass'n v. City of Dubuque*, 553 N.W.2d 603 (Iowa 1996).

[FN13] *Lide v. Mears*, 231 N.C. 111, 56 S.E.2d 404 (1949).

[FN14] *Com. v. Kentucky Retirement Systems*, 396 S.W.3d 833 (Ky. 2013).

[FN15] *County of Chenango v. County of Broome*, 180 A.D.2d 319, 585 N.Y.S.2d 577 (3d Dep't 1992).

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
A. In General

[Topic Summary Correlation Table References](#)

§ 181. Nature of claim

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 252.1 to 254

A claim for declaratory relief often originates in equity.[1] Declaratory relief is a remedy which is equitable in nature, not a claim.[2]

A declaratory judgment can be obtained either at law or in equity, and the determination of whether the action is properly at law or in equity must be made by an examination of the nature of the claim asserted and the relief requested.[3] The character of a declaratory judgment action as legal or equitable is generally ascertained from the body of the complaint, but when necessary, resort may also be had to the prayer for relief and any other facts and circumstances which throw light upon the main purpose of the action.[4] A litigant's request for declaratory relief does not change the underlying nature of a suit or confer jurisdiction on a court.[5] If there is uncertainty regarding whether the declaratory judgment action is legal or equitable, a litmus test that can be applied is whether evidentiary objections were ruled on by the trial court.[6] The court will review the case on appeal in the same manner in which the trial court considered it regardless of what the factors suggest.[7]

Certain types of cases have been determined to be legal or equitable; thus, the courts have held that—

- actions seeking a declaration of rights under a contract and a judgment awarding damages for breach of contract are essentially legal in nature.[8]
- a suit to determine coverage under an insurance policy is an action at law.[9]
- declaratory judgment actions involving the interpretation of statutes are actions at law.[10]
- a declaratory judgment action under a state's Freedom of Information Act (FOIA) to determine whether certain information should be disclosed is an action at law.[11]
- actions to determine the legal settlement of a person are tried in equity.[12]
- an action for a declaration that a governmental entity has violated a law is equitable in nature.[13]

— actions to declare a zoning ordinance void and to enjoin its enforcement are equitable in nature.^[14] However, an action simply to declare a zoning ordinance invalid, when such action is tried without a jury, is one at law.^[15]

The right to a jury trial may determine whether an action is in equity or in law.^[16]

Observation:

The essential distinction between an action for declaratory judgment and the usual action is that, it is not necessary that an actual wrong has been committed or loss has occurred in order to sustain the declaratory judgment action, but there must be no uncertainty that the loss will occur or that the asserted right will be invaded.^[17]

[FN1] *Northgate Homes, Inc. v. City of Dayton*, 126 F.3d 1095 (8th Cir. 1997).

[FN2] *Mettler Walloon, L.L.C. v. Melrose Tp.*, 281 Mich. App. 184, 761 N.W.2d 293 (2008).

[FN3] *LaSalle Bank, N.A. v. Reeves*, 173 Md. App. 392, 919 A.2d 738 (2007).

[FN4] *Sloan v. Greenville County*, 380 S.C. 528, 670 S.E.2d 663 (Ct. App. 2009).

[FN5] *State v. 1165 Airport Boulevard Office Building, Ltd.*, 212 S.W.3d 610 (Tex. App. Austin 2006).

[FN6] *Van Sloun v. Agans Bros., Inc.*, 778 N.W.2d 174 (Iowa 2010).

[FN7] *Ernst v. Johnson County*, 522 N.W.2d 599 (Iowa 1994).

[FN8] *Ex parte Bennett*, 622 So. 2d 1307 (Ala. 1993); *E & E Property Holdings, LLC v. Universal Companies, LLC*, 18 Neb. App. 532, 788 N.W.2d 571 (2010); *Harris v. Warren Family Properties, LLC*, 207 Or. App. 732, 143 P.3d 548 (2006); *Middleton v. Eubank*, 388 S.C. 8, 694 S.E.2d 31 (Ct. App. 2010), cert. denied, (July 13, 2011).

[FN9] *Nationwide Mut. Ins. Co. v. Rhoden*, 398 S.C. 393, 728 S.E.2d 477 (2012).

[FN10] *Normandy Corp. v. South Carolina Dept. of Transp.*, 386 S.C. 393, 688 S.E.2d 136 (Ct. App. 2009), cert. denied, (Mar. 2, 2011).

[FN11] *Seago v. Horry County*, 378 S.C. 414, 663 S.E.2d 38 (2008).

[FN12] *Washington County v. Tama County*, 555 N.W.2d 834 (Iowa 1996).

[FN13] *Wetovick v. County of Nance*, 279 Neb. 773, 782 N.W.2d 298 (2010).

[FN14] *Smith v. City of Papillion*, 270 Neb. 607, 705 N.W.2d 584 (2005).

[FN15] *Harkins v. Greenville County*, 340 S.C. 606, 533 S.E.2d 886 (2000).

[FN16] *In re Environmental Ins. Declaratory Judgment Actions*, 149 N.J. 278, 693 A.2d 844 (1997).

[FN17] [Emick v. Sunset Beach & Twin Lakes, Inc.](#), 180 N.C. App. 582, 638 S.E.2d 490 (2006).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 181

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
B. Limitations and Laches

[Topic Summary Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  [255](#)

A.L.R. Library

A.L.R. Index, Declaratory Judgments or Relief

West's A.L.R. Digest, Declaratory Judgments §§[255](#)

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS IV B REF

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
B. Limitations and Laches

[Topic Summary Correlation Table References](#)

§ 182. Statute of limitations

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 255

As a general rule, an action for declaratory judgment will be barred to the same extent that the applicable statute of limitations bars an underlying action in law or equity.[1] Generally, the right to seek a declaratory judgment does not itself prescribe; however, the nature of the basic underlying action determines the appropriate prescriptive period.[2]

Statutes of limitations apply to a declaratory judgment action to the same extent as a nondeclaratory proceeding based on the same cause of action.[3] Because claims for declaratory relief necessarily derive from claims for substantive relief, the statute of limitations for the underlying action at law generally is applied to an accompanying action for declaratory relief.[4]

The appropriate limitations period in a declaratory judgment action is determined by examining the substance of that action to identify the relationship out of which the claim arose, and the relief is sought.[5] Thus, where a complaint seeking a declaratory judgment does not include a claim for conversion, the claim is not subject to the statute of limitations for conversion.[6] Also, a liability insurer denying coverage need not immediately initiate a declaratory judgment action prior to any other party's filing of a motion; all that is required is to seek the court's determination on the coverage issues.[7]

Where an action for a declaratory judgment could have been brought in a different form asserting a particular cause of action, the limitations period applicable to the particular cause of action will apply.[8] If the court determines that the underlying dispute in a declaratory judgment action can be or could have been resolved through a form of action or proceeding for which a specific limitations period is statutorily provided, that limitations period governs the declaratory judgment action.[9] Stated somewhat differently, when a petition for declaratory judgment seeks the same relief that is otherwise available in another statutory proceeding, then the filing of the declaratory judgment is governed by the statute of limitations governing that statutory proceeding.[10]

Blanket provisions found in statutes of limitations fixing the time of institution of all other actions for which no specific limitation is prescribed by the other provisions of the statute have been applied to actions for declaratory relief.[11] In some cases, the courts have imposed a deadline on the filing of declaratory judgments in or-

der to avoid impeding the progress of the underlying case.[12]

The federal court of appeals is not bound by a determination of the tax court that it did not have jurisdiction over a suit that was filed after the statutory deadline where the ruling was merely the lower court's interpretation of the Internal Revenue Code and other laws that guide the resolution of procedural issues.[13] Also, in the federal courts, statutes of limitations do not apply to actions seeking equitable relief, which can only be barred by laches; but where, in a declaratory judgment action, the plaintiff could have sought relief by way of damages under a federal statute, the situation is one of concurrent legal and equitable jurisdiction, in which case the statute of limitations applies.[14]

Practice Tip:

When a court holds that a claim for declaration is not time-barred, it should not dismiss a related claim in the same case as baseless.[15]

[FN1] *Algrant v. Evergreen Valley Nurseries Ltd. Partnership*, 126 F.3d 178 (3d Cir. 1997); *International Ass'n of Machinists and Aerospace Workers v. Tennessee Valley Authority*, 108 F.3d 658, 1997 FED App. 0091P (6th Cir. 1997); *Zuill v. Shanahan*, 80 F.3d 1366 (9th Cir. 1996), as amended, (June 14, 1996); *Interlude, Inc. v. Skurat*, 253 Conn. 531, 754 A.2d 153 (2000); *Commercial Union Ins. Co. v. Porter Hayden Co.*, 116 Md. App. 605, 698 A.2d 1167 (1997).

As to statute of limitations, generally, see *Am. Jur. 2d, Limitation of Actions* §§ 10 to 15.

[FN2] *Gaylord Container/Temple Inland Corp. v. Dunaway*, 38 So. 3d 1083 (La. Ct. App. 1st Cir. 2010).

[FN3] *Weavewood, Inc. v. S & P Home Investment, LLC*, 821 N.W.2d 576 (Minn. 2012).

[FN4] *Westlands Water District v. United States*, 109 Fed. Cl. 177 (2013).

[FN5] *Canyon del Rio Investors, L.L.C. v. City of Flagstaff*, 227 Ariz. 336, 258 P.3d 154 (Ct. App. Div. 1 2011); *Doorley v. DeMarco*, 106 A.D.3d 27, 962 N.Y.S.2d 546 (4th Dep't 2013).

[FN6] *Allied Inv. Corp. v. Jasen*, 354 Md. 547, 731 A.2d 957 (1999).

[FN7] *Carney v. Village of Darien*, 60 F.3d 1273 (7th Cir. 1995) (applying Wisconsin law).

[FN8] *Doorley v. DeMarco*, 106 A.D.3d 27, 962 N.Y.S.2d 546 (4th Dep't 2013).

[FN9] *Vecce v. Town of Babylon*, 32 A.D.3d 1038, 822 N.Y.S.2d 94 (2d Dep't 2006).

[FN10] *Allen v. City of Memphis*, 397 S.W.3d 572 (Tenn. Ct. App. 2012), appeal denied, (Oct. 1, 2012).

[FN11] *Vigilant Ins. Co. of America v. Housing Authority of City of El Paso, Tex.*, 87 N.Y.2d 36, 637 N.Y.S.2d 342, 660 N.E.2d 1121, 27 U.C.C. Rep. Serv. 2d 1285 (1995); *Quick Safe-T Hitch, Inc. v. RSB Systems L.C.*, 2000 UT 84, 12 P.3d 577 (Utah 2000).

[FN12] *Binda v. Royal Ins. Co.*, 144 N.H. 613, 744 A.2d 634 (2000); *Chelan County v. Nykreim*, 146 Wash. 2d 904, 52 P.3d 1 (2002).

[FN13] *Flight Attendants Against UAL Offset (FAAUO) v. C.I.R.*, 165 F.3d 572, 170 A.L.R. Fed. 757 (7th Cir. 1999).

[FN14] *Swan v. Board of Higher Ed. of City of New York by Rosenberg*, 319 F.2d 56, 7 Fed. R. Serv. 2d 252 (2d Cir. 1963).

[FN15] *Allied Inv. Corp. v. Jasen*, 354 Md. 547, 731 A.2d 957 (1999).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 182

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
B. Limitations and Laches

[Topic Summary Correlation Table References](#)

§ 183. Laches

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  255

Since proceedings for declaratory relief have a great deal in common with equitable proceedings, the equitable doctrine of laches has been applied in such proceedings.[1] In other words, an action for a declaratory judgment should be subject to equitable defenses such as laches when the underlying cause of action on which it is based sounds in equity.[2]

Laches may be asserted with respect to the defendant's past conduct but not for prospective relief commencing from the time the lawsuit is filed.[3] The doctrine of laches applies only when the delay in filing is unreasonable[4] and has worked to the disadvantage, injury, or prejudice of the person seeking to invoke it.[5] A finding that equitable injunctive relief is blocked by laches does not necessarily mean that an accompanying claim should also be blocked; rather, the courts should independently examine each cause of action to determine whether laches should apply.[6]

Laches does not apply where the plaintiff did not know or should not have known that a cause of action had arisen.[7]

[FN1] *Mitchell v. Mitchell*, 274 Ga. 633, 555 S.E.2d 436 (2001); *Arena v. City of Providence*, 919 A.2d 379 (R.I. 2007).

For a discussion of laches, see *Am. Jur. 2d, Equity* §§ 107 to 173.

[FN2] *Caminis v. Troy*, 112 Conn. App. 546, 963 A.2d 701 (2009), judgment aff'd, 300 Conn. 297, 12 A.3d 984 (2011).

[FN3] *TransWorld Airlines, Inc. v. American Coupon Exchange, Inc.*, 913 F.2d 676 (9th Cir. 1990).

[FN4] *First Nat. Bank of Springfield v. Malpractice Research, Inc.*, 179 Ill. 2d 353, 228 Ill. Dec. 202, 688 N.E.2d 1179, 70 A.L.R.5th 759 (1997).

[FN5] *Hutchinson v. Pfeil*, 105 F.3d 562 (10th Cir. 1997); *Laverty v. Alaska R.R. Corp.*, 13 P.3d 725 (Alaska 2000); *Stewart v. Lady*, 251 Va. 106, 465 S.E.2d 782 (1996); *Campbell County School Dist. v. Catchpole*, 6 P.3d 1275, 146 Ed. Law Rep. 912 (Wyo. 2000).

[FN6] *Laverty v. Alaska R.R. Corp.*, 13 P.3d 725 (Alaska 2000).

[FN7] *Goodman v. Lee*, 78 F.3d 1007 (5th Cir. 1996); *Longley v. Knapp*, 1998 ME 142, 713 A.2d 939 (Me. 1998).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 183

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
C. Jurisdiction

[Topic Summary Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 271 to 276

A.L.R. Library

A.L.R. Index, Declaratory Judgments or Relief

A.L.R. Index, Diversity of Citizenship

A.L.R. Index, Federal Question

A.L.R. Index, Preemption

A.L.R. Index, Removal of Actions

West's A.L.R. Digest, Declaratory Judgments 🔑 271 to 276

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS IV C REF

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
C. Jurisdiction
1. State Courts

[Topic Summary Correlation Table References](#)

§ 184. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 271, 273

There must be subject matter jurisdiction in a court before a declaratory judgment may be sought.[1] Whether a court has subject matter jurisdiction to consider an action for declaratory judgment depends upon whether the underlying controversy falls within the constitutional and statutory jurisdiction of the court.[2]

It has sometimes been said that a declaratory judgment statute is jurisdictional in nature.[3] The statute governing the power to issue declaratory judgments is deemed to be the source of the jurisdiction of the courts of record to entertain applications for declaratory relief and the power to make binding adjudications of the rights of the parties involved.[4] However, the view has also been followed in some jurisdictions that a declaratory judgment statute is not an independent grant of jurisdiction,[5] nor does it convey subject matter jurisdiction.[6] In addition, a declaratory judgment statute does not expand[7] or contract the jurisdiction of the courts,[8] and it does not extend the jurisdiction of the courts over the subject matter or the parties.[9] Even if a court could ignore the requirements for establishing a justiciable controversy, the court will not issue a declaratory judgment absent original jurisdiction as provided by the constitution.[10]

Observation:

If a court lacks personal jurisdiction over one of the parties, it cannot issue a declaratory judgment.[11]

The applicable substantive law and the basic character of the lawsuit do not change simply because a complainant requests declaratory relief; to the contrary, a complaint requesting declaratory relief must present a substantive cause of action that would be cognizable in a nondeclaratory suit.[12]

[FN1] *Villines v. Harris*, 362 Ark. 393, 208 S.W.3d 763 (2005).

[FN2] *Myrick v. Moody Nat. Bank*, 336 S.W.3d 795 (Tex. App. Houston 1st Dist. 2011).

[FN3] *Cicco v. Stockmaster*, 89 Ohio St. 3d 95, 2000-Ohio-434, 728 N.E.2d 1066 (2000).

[FN4] *Charlottesville Area Fitness Club Operators Ass'n v. Albemarle County Bd. of Sup'rs*, 285 Va. 87, 737 S.E.2d 1 (2013).

[FN5] *Barcik v. Kubiacyk*, 321 Or. 174, 895 P.2d 765, 100 Ed. Law Rep. 759 (1995); *Texas Natural Resource Conservation Com'n v. IT-Davy*, 74 S.W.3d 849 (Tex. 2002).

[FN6] *Martin v. Equitable Life Assur. Soc. of the U.S.*, 344 Ark. 177, 40 S.W.3d 733 (2001).

[FN7] *City of Dallas v. Albert*, 354 S.W.3d 368 (Tex. 2011).

[FN8] *City and County of Denver v. United Air Lines, Inc.*, 8 P.3d 1206 (Colo. 2000); *Burnette v. Hartford Underwriters Ins. Co.*, 770 So. 2d 948 (Miss. 2000).

[FN9] *Town of Andover v. State*, 170 Vt. 552, 742 A.2d 756 (1999).

[FN10] *Donaldson v. State*, 156 A.D.2d 290, 548 N.Y.S.2d 676 (1st Dep't 1989); *Walker v. Munro*, 124 Wash. 2d 402, 879 P.2d 920 (1994).

[FN11] *Riddick v. Myers*, 131 N.C. App. 871, 509 S.E.2d 469 (1998).

[FN12] *Weavewood, Inc. v. S & P Home Investment, LLC*, 821 N.W.2d 576 (Minn. 2012).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 184

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
C. Jurisdiction
1. State Courts

[Topic Summary Correlation Table References](#)

§ 185. Jurisdiction of particular state courts

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 273

The courts may grant declaratory judgments only when the subject matter of the declaration is within their jurisdiction; thus, a court lacks jurisdiction over an action for declaratory judgment when the probate court has primary jurisdiction.[1] Courts of equity do not have jurisdiction to render declaratory judgments where the subject matter is not cognizable in a court of equity.[2] Appellate courts typically do not have original jurisdiction over actions for declaratory relief[3] although there are exceptions to this rule.[4]

Statutes which have been construed as conferring exclusive jurisdiction on a particular court may limit the scope of jurisdiction under state declaratory judgment acts; accordingly—

- tax courts may not issue a declaration concerning the constitutionality of a tax program.[5]
- probate courts may not issue a declaratory judgment of paternity.[6]
- the circuit courts have jurisdiction over declaratory judgment actions to determine ownership of personal property.[7]
- a district court may issue a declaratory judgment that a taxpayer's interest under a contract for a deed was extinguished by a purchase at an Internal Revenue Service auction.[8]
- a criminal district court, not civil district court, had the authority to determine the constitutionality of a statute criminalizing political advertising which did not include the name of the individual, candidate, or organization responsible for the advertising.[9]

[FN1] *Cross v. Stokes*, 275 Ga. 872, 572 S.E.2d 538 (2002) (wills); *In re Estate of Piche*, 166 Vt. 479, 697 A.2d 674 (1997) (probate).

[FN2] *Bryant v. Picado*, 338 Ark. 227, 996 S.W.2d 17 (1999).

[FN3] *State ex rel. Shimko v. McMonagle*, 92 Ohio St. 3d 426, 2001-Ohio-301, 751 N.E.2d 472 (2001); *Chenault v. Phillips*, 914 S.W.2d 140 (Tex. 1996).

[FN4] *Petition of University Hospitals Authority*, 1997 OK 162, 953 P.2d 314 (Okla. 1997); *Bradford Associates v. Rhode Island Div. of Purchases*, 772 A.2d 485 (R.I. 2001).

[FN5] *State Bd. of Tax Com'rs v. Montgomery*, 730 N.E.2d 680 (Ind. 2000).

[FN6] *In re Joseph B.G.*, 1997 ME 210, 704 A.2d 327 (Me. 1997).

[FN7] *Matthey v. St. Louis County*, 298 S.W.3d 903 (Mo. Ct. App. E.D. 2009).

[FN8] *Cotton v. Brow*, 903 P.2d 530 (Wyo. 1995).

[FN9] *Dallas County District Attorney v. Doe*, 969 S.W.2d 537 (Tex. App. Dallas 1998).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 185

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
C. Jurisdiction
2. Federal Courts
a. In General

Topic Summary Correlation Table References

§ 186. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 271, 274.1

The Federal Declaratory Judgment Act confers jurisdiction to render declaratory judgments on "any court of the United States."^[1]

The Federal Declaratory Judgment Act does not expand or enlarge the jurisdiction of the federal courts;^[2] it is procedural only and does not create an independent cause of action.^[3]

Although a district court has power to hear a declaratory judgment action, the action must still meet jurisdictional criteria.^[4]

The Federal Declaratory Judgment Act is not an independent grant of federal subject matter jurisdiction, so jurisdiction depends upon the nature of the anticipated claims.^[5]

The Federal Declaratory Judgment Act does not itself confer federal subject matter jurisdiction.^[6] The Act merely defines the scope of available declaratory relief.^[7]

The Federal Declaratory Judgment Act does not extend the jurisdiction of federal courts; it only enlarges the range of remedies available.^[8]

Declaratory judgment jurisdiction must exist at all stages of review and not merely at the time the complaint was filed.^[9] In other words, the party seeking a declaratory judgment must establish that jurisdiction existed at the time the claim for declaratory relief was filed and that it has continued since.^[10]

CUMULATIVE SUPPLEMENT

Cases:

Federal courts, when determining declaratory judgment jurisdiction, often look to the character of the

threatened action; that is to say, they ask whether a coercive action brought by the declaratory judgment defendant would necessarily present a federal question. 28 U.S.C.A. § 2201. *Medtronic, Inc. v. Mirowski Family Ventures, LLC*, 134 S. Ct. 843 (2014).

[END OF SUPPLEMENT]

[FN1] The Act has also been held not to provide any basis for jurisdiction in the Court of Federal Claims. *Cabral v. U.S.*, 317 Fed. Appx. 979 (Fed. Cir. 2008).

[FN2] *Vaden v. Discover Bank*, 556 U.S. 49, 129 S. Ct. 1262, 173 L. Ed. 2d 206 (2009); *Nike, Inc. v. Already, LLC*, 663 F.3d 89 (2d Cir. 2011), cert. granted, 133 S. Ct. 24, 183 L. Ed. 2d 674 (2012) and aff'd, 133 S. Ct. 721, 184 L. Ed. 2d 553 (2013).

[FN3] *Vaden v. Discover Bank*, 556 U.S. 49, 129 S. Ct. 1262, 173 L. Ed. 2d 206 (2009);

Chevron Corp. v. Naranjo, 667 F.3d 232 (2d Cir. 2012), cert. denied, 133 S. Ct. 423, 184 L. Ed. 2d 288 (2012).

[FN4] *Bejarano v. Homeland Sec. Dept.*, 300 Fed. Appx. 651 (11th Cir. 2008); *Penn-America Ins. Co. v. Coffee*, 238 F. Supp. 2d 744 (E.D. Va. 2003), rev'd and remanded on other grounds, 368 F.3d 409 (4th Cir. 2004).

[FN5] *DeBartolo v. Healthsouth Corp.*, 569 F.3d 736 (7th Cir. 2009).

[FN6] *City of Colton v. American Promotional Events, Inc.-West*, 614 F.3d 998 (9th Cir. 2010); *North County Communications Corp. v. California Catalog & Technology*, 594 F.3d 1149 (9th Cir. 2010).

[FN7] *Watchtower Bible and Tract Soc. of New York, Inc. v. Colombani*, 712 F.3d 6 (1st Cir. 2013).

[FN8] *Prier v. Steed*, 456 F.3d 1209 (10th Cir. 2006).

[FN9] *Streck, Inc. v. Research & Diagnostic Systems, Inc.*, 665 F.3d 1269 (Fed. Cir. 2012), cert. denied, 132 S. Ct. 2442, 182 L. Ed. 2d 1064 (2012).

[FN10] *Streck, Inc. v. Research & Diagnostic Systems, Inc.*, 665 F.3d 1269 (Fed. Cir. 2012), cert. denied, 132 S. Ct. 2442, 182 L. Ed. 2d 1064 (2012).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 186

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
C. Jurisdiction
2. Federal Courts
a. In General

[Topic Summary Correlation Table References](#)

§ 187. Discretion of court

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑274.1

The Federal Declaratory Judgment Act empowers federal courts to grant declaratory relief, and the exercise of this declaratory power is discretionary,[1] over a suit otherwise falling under federal subject matter jurisdiction.[2]

In the declaratory judgment context, the normal principle that federal courts should adjudicate claims within their jurisdiction yields to considerations of practicality and wise judicial administration.[3] The court may abstain from exercising subject matter jurisdiction over a declaratory judgment suit if the assertion of jurisdiction would be inconsistent with considerations of comity, federalism, and wise judicial administration.[4]

A district court ordinarily should not exercise its discretion to grant declaratory relief where another suit is pending in state court presenting the same issues, not governed by federal law, between the same parties; in such cases, there is a presumption that the entire suit should be heard in the state court.[5]

In determining whether to exercise jurisdiction over a removed declaratory judgment claim, the federal district court takes into account considerations of federalism, efficiency, and comity, including: (1) the strength of the State's interest in having the issues raised decided in the state courts; (2) whether the issues raised can be more efficiently resolved in the pending state court action; (3) whether permitting the action to go forward would result in unnecessary entanglement between federal and state courts; and (4) whether the federal action is being used merely as a device for procedural fencing.[6]

The exercise of discretion in granting or denying declaratory relief is subject to review by an appellate court.[7]

[FN1] [Unionamerica Ins. Co., Ltd. v. Nufab Corp.](#), 30 Fed. Appx. 30 (3d Cir. 2002); [Government Em-](#)

ployees Ins. Co. v. Dizol, 133 F.3d 1220 (9th Cir. 1998).

[FN2] Kiewit Eastern Co., Inc. v. L & R Const. Co., Inc., 44 F.3d 1194 (3d Cir. 1995); Snodgrass v. Provident Life and Acc. Ins. Co., 147 F.3d 1163 (9th Cir. 1998).

[FN3] Baisden v. I'm Ready Productions, Inc., 804 F. Supp. 2d 549 (S.D. Tex. 2011), judgment aff'd, 693 F.3d 491 (5th Cir. 2012), cert. denied, 133 S. Ct. 1585, 185 L. Ed. 2d 578 (2013).

[FN4] Rei-Jeu Chang v. Maxwell, 102 F. Supp. 2d 316 (D. Md. 2000), aff'd, 19 Fed. Appx. 148 (4th Cir. 2001).

[FN5] Swenson v. T-Mobile USA, Inc., 415 F. Supp. 2d 1101 (S.D. Cal. 2006).

[FN6] Chapman v. Clarendon Nat. Ins. Co., 299 F. Supp. 2d 559 (E.D. Va. 2004).

[FN7] § 249.

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 187

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
C. Jurisdiction
2. Federal Courts
a. In General

[Topic Summary Correlation Table References](#)

§ 188. Independent source of jurisdiction

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 274.1

The Federal Declaratory Judgment Act[1] does not confer independent jurisdiction but merely provides additional remedies where jurisdiction already exists.[2] The plaintiff must establish an independent source of subject matter jurisdiction in order to proceed to pursue declaratory relief in a federal court.[3] More specifically, the Federal Declaratory Judgment Act does not create an independent basis for subject matter jurisdiction in a suit against the United States and its agencies[4] and does not establish an independent basis for federal jurisdiction over an action brought against the federal government by the personal guarantor of a corporation's criminal fine.[5]

Simply making conclusory statements in a complaint that the court has subject matter jurisdiction does not establish federal jurisdiction.[6]

Observation:

When the district court has constitutional and statutory jurisdiction to hear a case brought pursuant to the Federal Declaratory Judgment Act, the district court may entertain such an action without sua sponte addressing whether jurisdiction should be declined.[7]

[FN1] 28 U.S.C.A. § 2201.

[FN2] *Ernst & Young v. Depositors Economic Protection Corp.*, 45 F.3d 530 (1st Cir. 1995); *Centennial Ins. Co. v. Ryder Truck Rental, Inc.*, 149 F.3d 378 (5th Cir. 1998); *City of Colton v. American Promotional Events, Inc.-West*, 614 F.3d 998 (9th Cir. 2010); *Mylan Pharmaceuticals, Inc. v. Thompson*, 268 F.3d 1323 (Fed. Cir. 2001).

[FN3] *Alberto San, Inc. v. Consejo De Titulares Del Condominio San Alberto*, 522 F.3d 1 (1st Cir.

2008); *Correspondent Services Corp. v. First Equities Corp. of Florida*, 442 F.3d 767 (2d Cir. 2006); *Samuel C. Johnson 1988 Trust v. Bayfield County, Wis.*, 520 F.3d 822 (7th Cir. 2008); *Zutz v. Nelson*, 601 F.3d 842 (8th Cir. 2010); *Devon Energy Production Co., L.P. v. Mosaic Potash Carlsbad, Inc.*, 693 F.3d 1195 (10th Cir. 2012).

[FN4] *Micalizzi v. Rumsfeld*, 247 F. Supp. 2d 556 (D. Vt. 2003).

[FN5] *Harbert v. U.S.*, 206 Fed. Appx. 903 (11th Cir. 2006).

[FN6] *Gaar v. Quirk*, 86 F.3d 451 (5th Cir. 1996).

[FN7] *Government Employees Ins. Co. v. Dizol*, 133 F.3d 1220 (9th Cir. 1998).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 188

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
C. Jurisdiction
2. Federal Courts
a. In General

[Topic Summary Correlation Table References](#)

§ 189. Anticipation of defenses to federal cause of action

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 274.1

The anticipation of defenses to a federal question lawsuit is ordinarily not a proper use of the declaratory judgment procedure since it deprives the plaintiff of the traditional choice of forum and timing, and it provokes a disorderly race to the courthouse.[1] In determining whether there is federal subject matter jurisdiction for declaratory judgment actions, it is the character of the threatened action, and not of the defense, which will determine whether there is federal question jurisdiction in the district court.[2]

However, a party who would otherwise be a defendant in a federal court suit may obtain a declaration of legal rights prior to the commencement of a coercive action against that party.[3] If the declaratory judgment defendant could have brought a coercive action in a federal court to enforce his or her rights, then the federal court has jurisdiction of the declaratory judgment suit.[4]

[FN1] *Salomon Bros., Inc. v. Carey*, 556 F. Supp. 499 (S.D. N.Y. 1983).

[FN2] *ABB Inc. v. Cooper Industries, LLC*, 635 F.3d 1345 (Fed. Cir. 2011).

[FN3] *Atchison, T. and S. F. Ry. Co. v. Gold Bondholders Protective Council, Inc.*, 506 F. Supp. 449 (D. Del. 1981); *Keith v. Louisiana Dept. of Educ.*, 553 F. Supp. 295, 8 Ed. Law Rep. 648 (M.D. La. 1982).

[FN4] *Arco Products Co. v. Stewart & Young Inc.*, 50 Fed. Appx. 336 (9th Cir. 2002).

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
C. Jurisdiction
2. Federal Courts
a. In General

Topic Summary Correlation Table References

§ 190. Anticipation of defenses to state cause of action

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 274.1

The federal court will not appropriate litigation from state courts simply to allow a potential defendant to a state-law cause of action to test the federal-law defense prior to the initiation of the state-law action in state court.[1] The same limitation applies when the party seeking a declaratory judgment relies on federal law to set up a defense to a state court action.[2]

The test for federal question jurisdiction is whether the plaintiff is seeking an adjudication of a claim which is essentially meaningful only when pleaded as a defense to the pending state court action.[3] The plaintiff's claim itself must present a federal question unaided by anything alleged in anticipation or avoidance of defenses which it is thought the defendant may interpose in the state court action.[4] An impending state court suit for the specific performance of a contract cannot be converted to a declaratory judgment suit in a federal court on the basis of the plaintiff's anticipation of a defense available in the state court action.[5]

[FN1] *Southern Trust Ins. Co. v. Griner*, 550 F. Supp. 39 (S.D. Ga. 1982).

[FN2] *City of Saginaw v. Service Employees Intern. Union, Local 446-M*, 720 F.2d 459 (6th Cir. 1983).

[FN3] *Nachwalter v. Christie*, 538 F. Supp. 742 (S.D. Fla. 1982).

[FN4] *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 70 S. Ct. 876, 94 L. Ed. 1194 (1950).

[FN5] *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 70 S. Ct. 876, 94 L. Ed. 1194 (1950).

AMJUR DECLJUDS § 190

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
C. Jurisdiction
2. Federal Courts
a. In General

[Topic Summary Correlation Table References](#)

§ 191. Anticipation of defenses to state cause of action—Contesting state law as unconstitutional

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑276

The federal courts have no jurisdiction over an action not otherwise arising under federal law simply because it is cast as a suit for declaratory relief against an allegedly unconstitutional state regulatory action.[1] Where the plaintiff seeking a declaratory judgment claims only that various constitutional protections are a defense to the enforcement of a state law, the federal court has no jurisdiction to entertain the action.[2] Even when a state law permits parties to file a declaratory judgment action to challenge the validity of state or local tax laws, the federal court has no jurisdiction to consider the claim.[3]

[FN1] *Evanston Ins. Co., Inc. v. Merin*, 598 F. Supp. 1290 (D.N.J. 1984).

[FN2] *State of Mo. ex rel. Missouri Highway and Transp. Com'n v. Cuffley*, 112 F.3d 1332 (8th Cir. 1997); *Evanston Ins. Co., Inc. v. Merin*, 598 F. Supp. 1290 (D.N.J. 1984).

[FN3] *Indiana Waste Systems, Inc. v. County of Porter*, 787 F. Supp. 859 (N.D. Ind. 1992).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 191

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
C. Jurisdiction
2. Federal Courts
a. In General

[Topic Summary Correlation Table References](#)

§ 192. Suit seeking declaration that state law is constitutional

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑276

The federal courts have no jurisdiction over a declaratory judgment suit seeking a declaration that a state law is constitutional.[1]

Although the federal courts will take jurisdiction of a suit by a state seeking a declaration that its tax laws are not preempted,[2] a state's suit for a declaration of the validity of state law does not fall within the original federal question jurisdiction.[3]

Observation:

When a state law prohibits the district court from granting declaratory relief "with respect to Federal taxes," the court can still address questions concerning related issues which do not interfere with the Internal Revenue Service's collection of taxes.[4]

[FN1] [Keith v. Louisiana Dept. of Educ.](#), 553 F. Supp. 295, 8 Ed. Law Rep. 648 (M.D. La. 1982).

[FN2] [State of Ariz. v. Atchison, T. & S. F. R. Co.](#), 656 F.2d 398 (9th Cir. 1981).

[FN3] [Franchise Tax Bd. of State of Cal. v. Construction Laborers Vacation Trust for Southern California](#), 463 U.S. 1, 103 S. Ct. 2841, 77 L. Ed. 2d 420 (1983).

[FN4] [Dominion Trust Co. of Tennessee v. U.S.](#), 786 F. Supp. 1321 (M.D. Tenn. 1991).

AMJUR DECLJUDS § 192

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
C. Jurisdiction
2. Federal Courts
a. In General

[Topic Summary Correlation Table References](#)

§ 193. Federal preemption of state statute or regulation

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑276

Where a federal plaintiff seeks a declaratory judgment contending that federal question jurisdiction is afforded by the plaintiff's claim that the state statute or regulation which might be enforced against the plaintiff is preempted by a federal statute, it is the character of the threatened action and not of the defense which determines whether there is federal question jurisdiction.[1]

The view has been expressed that declaratory judgment actions seeking a declaration of federal preemption of state statutes or regulations do not come within the federal question jurisdiction of the federal courts because such actions merely raise federal defenses to a state cause of action.[2] A claim does not arise under federal law where it relies on federal law only to establish an immunity or defense which would preclude the declaratory judgment defendant from successfully litigating against the declaratory judgment plaintiff a claim arising under state law.[3]

According to another view, however, the possibility that the declaratory plaintiff might be claiming federal preemption of state law as a defense to some state cause of action is not determinative of federal question jurisdiction; thus, the court must look to see if there is a ripe and justiciable controversy, and the declaratory plaintiff is subject to conflicting state and federal regulation even though the declaratory plaintiff may become a defendant in a state court action.[4] In those cases in which the courts have taken jurisdiction based on a federal preemption defense, the courts have noted that proof of threatened or probable action by state regulators against the federal plaintiff may entitle the plaintiff to injunctive relief in addition to the declaratory relief, and it is this element which supports federal question jurisdiction of the entire case.[5]

[FN1] *Albradco, Inc. v. Bevona*, 982 F.2d 82 (2d Cir. 1992); *City Nat. Bank v. Edmisten*, 681 F.2d 942 (4th Cir. 1982); *Michigan Sav. and Loan League v. Francis*, 683 F.2d 957, 69 A.L.R. Fed. 743 (6th Cir. 1982).

[FN2] Exxon Corp. v. Hunt, 683 F.2d 69 (3d Cir. 1982); City Nat. Bank v. Edmisten, 681 F.2d 942 (4th Cir. 1982); Michigan Sav. and Loan League v. Francis, 683 F.2d 957, 69 A.L.R. Fed. 743 (6th Cir. 1982).

[FN3] Alton Box Bd. Co. v. Esprit de Corp., 682 F.2d 1267 (9th Cir. 1982).

[FN4] Town of Springfield, Vt. v. McCarren, 549 F. Supp. 1134 (D. Vt. 1982), judgment aff'd, 722 F.2d 728 (2d Cir. 1983).

[FN5] Braniff Intern., Inc. v. Florida Public Service Commission, 576 F.2d 1100 (5th Cir. 1978); People of State of Ill. v. General Elec. Co., 683 F.2d 206 (7th Cir. 1982).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 193

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
C. Jurisdiction
2. Federal Courts
a. In General

[Topic Summary Correlation Table References](#)

§ 194. Federal preemption of state statute or regulation—Removal of state declaratory judgment action on ground of preemption

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 276

No federal question jurisdiction is acquired on removal of a complaint for a state declaratory judgment if, but for the availability of the declaratory judgment procedure, the federal claim would arise only as a defense to a state-created action.[1] The defendant in state court may not remove a declaratory judgment suit as a vehicle for determining whether the plaintiff's state-law claim has been preempted by federal law.[2] The contention that federal law completely preempts state law in a particular field does not serve as a basis for federal question jurisdiction on removal if the federal law does not also provide a federal cause of action.[3] A state declaratory judgment action may not be removed to a federal court on the basis of a defense of federal preemption even if that defense is anticipated in the plaintiff's complaint and even if both parties admit that the defense is the only question truly at issue in the case.[4]

[FN1] *Franchise Tax Bd. of State of Cal. v. Construction Laborers Vacation Trust for Southern California*, 463 U.S. 1, 103 S. Ct. 2841, 77 L. Ed. 2d 420 (1983); *County of St. Charles, Mo. v. Missouri Family Health Council*, 107 F.3d 682 (8th Cir. 1997).

[FN2] *People of State of Ill. ex rel. Barra v. Archer Daniels Midland Co.*, 704 F.2d 935 (7th Cir. 1983).

[FN3] *Cuomo v. Long Island Lighting Co.*, 589 F. Supp. 1387 (E.D. N.Y. 1984).

[FN4] *Franchise Tax Bd. of State of Cal. v. Construction Laborers Vacation Trust for Southern California*, 463 U.S. 1, 103 S. Ct. 2841, 77 L. Ed. 2d 420 (1983).

AMJUR DECLJUDS § 194

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
C. Jurisdiction
2. Federal Courts
b. Diversity Jurisdiction

[Topic Summary Correlation Table References](#)

§ 195. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑275

Under federal statute,[1] federal court jurisdiction of declaratory judgment suits may be based on diversity of citizenship as between the parties.[2]

The district court has jurisdiction over a legal malpractice insurer's action seeking a declaratory judgment that it owed no duty to defend or indemnify the insured against a state-court malpractice action, even though the state action, seeking injunctive relief, had not yet proceeded to judgment, where the requirements of diversity jurisdiction, that is, the amount in controversy and diversity of parties, have been met.[3]

[FN1] 28 U.S.C.A. § 1332.

[FN2] *Continental Cas. Co. v. Fuscardo*, 35 F.3d 963 (4th Cir. 1994); *Turner/Ozanne v. Hyman/Power*, 111 F.3d 1312 (7th Cir. 1997); *Federal Ins. Co. v. Bill Harbert Const. Co.*, 82 F. Supp. 2d 1331 (S.D. Ala. 1999).

[FN3] *Continental Cas. Co. v. Smith*, 243 F. Supp. 2d 576 (E.D. La. 2003).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 195

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
C. Jurisdiction
2. Federal Courts
b. Diversity Jurisdiction

[Topic Summary Correlation Table References](#)

§ 196. Personal jurisdiction; amount in controversy

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑275

A court cannot assert personal jurisdiction over a party to a declaratory judgment complaint unless the party has sufficient contacts with the forum.[1]

Moreover, in a declaratory judgment action, as in any federal action based on diversity of citizenship,[2] the amount in controversy must exceed a specified amount,[3] which is measured by the value of the object of the litigation.[4] To determine the amount in controversy, the court looks to the pecuniary effect that an adverse declaration would have on either party to the lawsuit.[5] In declaratory judgment suits involving liability insurance policies, the test of jurisdiction is the maximum amount for which the insurer might be liable under the policy if coverage is established independently.[6]

Practice Tip:

The plaintiff in a declaratory judgment action may reach the amount in controversy necessary for diversity jurisdiction by aggregating multiple claims.[7]

[FN1] *Red Wing Shoe Co., Inc. v. Hockerson-Halberstadt, Inc.*, 148 F.3d 1355 (Fed. Cir. 1998); *Dainippon Screen Mfg. Co., Ltd. v. CFMT, Inc.*, 142 F.3d 1266, 40 Fed. R. Serv. 3d 700 (Fed. Cir. 1998).

[FN2] As to diversity actions in federal courts generally, see *Am. Jur. 2d, Federal Courts* § 622.

[FN3] 28 U.S.C.A. § 1332(a).

[FN4] *City of Moore, Okl. v. Atchison, Topeka, & Santa Fe Ry. Co.*, 699 F.2d 507 (10th Cir. 1983); *The Bachman Co. v. MacDonald*, 173 F. Supp. 2d 318 (E.D. Pa. 2001) (holding that regardless of the appropriate standard of proof, a wholesaler is deemed to have failed to establish that the amount in con-

troversty required for diversity jurisdiction has been satisfied).

[FN5] *City of Moore, Okl. v. Atchison, Topeka, & Santa Fe Ry. Co.*, 699 F.2d 507 (10th Cir. 1983);
Hill v. Liberty Mut. Ins. Co., 453 F. Supp. 1342 (E.D. Va. 1978).

[FN6] *Kolstad v. Trinity Universal Ins. Co. of Kansas*, 12 F. Supp. 2d 1101 (D. Mont. 1998).

[FN7] *Budget Rent-A-Car, Inc. v. Higashiguchi*, 109 F.3d 1471 (9th Cir. 1997).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 196

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
C. Jurisdiction
2. Federal Courts
b. Diversity Jurisdiction

[Topic Summary Correlation Table References](#)

§ 197. Removal jurisdiction

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑275

A civil action of which the district courts would have original jurisdiction (other than federal question jurisdiction) is removable only if none of the parties joined as defendants is a citizen of the state in which such action is brought.[1] Thus, a state declaratory judgment action against an out-of-state corporation is removable on the grounds of diversity of citizenship.[2] The form of the state action, when brought as a declaratory judgment suit, does not affect the right to removal under the federal removal statute.[3]

Observation:

A federal statute may entitle certain parties to remove a case automatically.[4]

[FN1] 28 U.S.C.A. § 1441(b).

A civil action otherwise removable solely on the basis of the jurisdiction under 28 U.S.C.A. § 1332(a) may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the state in which such action is brought. 28 U.S.C.A. § 1441(b)(2).

As to removal jurisdiction, see [Am. Jur. 2d, Federal Courts](#) §§ 1374 to 1498.

[FN2] [Southern Harlan Coal Co. v. Alabama Fuel & Iron Co.](#), 58 F. Supp. 600 (E.D. Ky. 1945).

[FN3] [Southern Harlan Coal Co. v. Alabama Fuel & Iron Co.](#), 58 F. Supp. 600 (E.D. Ky. 1945).

[FN4] [Federal Reserve Bank of Atlanta v. Thomas](#), 220 F.3d 1235 (11th Cir. 2000) (statute permitted the Federal Reserve Bank to remove any civil suit from state court in which the Federal Reserve was a defendant).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 197

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
C. Jurisdiction
2. Federal Courts
b. Diversity Jurisdiction

[Topic Summary Correlation Table References](#)

§ 198. Federal question jurisdiction

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 274.1

The well-pleaded complaint rule, which governs the presence or absence of federal question jurisdiction^[1] applies to declaratory judgment cases.^[2] For declaratory judgment suits, the character of the action is judged based on the declaratory judgment defendant's hypothetical complaint; when the declaratory defendant's hypothetical suit arises under federal law, what is litigated in such a situation is the precise issue which could have been litigated in a federal court in a coercive action brought by the declaratory defendant.^[3]

Federal question jurisdiction exists if such jurisdiction would have existed in a coercive action by the defendant, even if the plaintiff's claim does not itself raise a federal question,^[4] or if the potential suit by the declaratory judgment defendant would arise under federal law.^[5] Thus, to determine the presence of a federal question in a declaratory judgment action, the court looks to the nature of the anticipated claims of the declaratory judgment defendant, not the anticipated defenses by the declaratory judgment plaintiff.^[6] If the underlying action does not contain a federal question, the court has no authority to issue a declaratory judgment.^[7]

Observation:

Federal courts do not have jurisdiction over a declaratory judgment action when the judgment sought is a de facto horizontal appeal from a state trial court.^[8]

[FN1] As to the well-pleaded complaint rule, generally, see [Am. Jur. 2d, Federal Courts §§ 899, 900, 932](#).

[FN2] [State of Mo. ex rel. Missouri Highway and Transp. Com'n v. Cuffley](#), 112 F.3d 1332 (8th Cir. 1997); [Republican Party of Guam v. Gutierrez](#), 277 F.3d 1086 (9th Cir. 2002).

[FN3] [ABB Inc. v. Cooper Industries, LLC](#), 635 F.3d 1345 (Fed. Cir. 2011).

[FN4] *Maxon Marine, Inc. v. Director, Office of Workers' Compensation Programs*, 39 F.3d 144 (7th Cir. 1994); *Commercial Union Ins. Co. v. U.S.*, 999 F.2d 581 (D.C. Cir. 1993).

[FN5] *Cardtoons, L.C. v. Major League Baseball Players Ass'n*, 95 F.3d 959 (10th Cir. 1996).

[FN6] *Gaar v. Quirk*, 86 F.3d 451 (5th Cir. 1996); *Hyatt Intern. Corp. v. Coco*, 302 F.3d 707 (7th Cir. 2002); *Standard Ins. Co. v. Saklad*, 127 F.3d 1179 (9th Cir. 1997); *Cardtoons, L.C. v. Major League Baseball Players Ass'n*, 95 F.3d 959 (10th Cir. 1996).

[FN7] *Michigan Southern R.R. Co. v. Branch & St. Joseph Counties Rail Users Ass'n., Inc.*, 287 F.3d 568, 2002 FED App. 0141P (6th Cir. 2002); *City of Beloit v. Local 643 of American Federation of State, County and Municipal Employees, AFL-CIO*, 248 F.3d 650 (7th Cir. 2001); *Truesdell v. Southern California Permanente Medical Group*, 37 Fed. Appx. 945 (9th Cir. 2002).

[FN8] *Confederated Tribes of Colville Reservation v. Superior Court of Okanogan County*, 945 F.2d 1138 (9th Cir. 1991).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 198

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
C. Jurisdiction
2. Federal Courts
b. Diversity Jurisdiction

[Topic Summary Correlation Table References](#)

§ 199. Federal question jurisdiction—Jurisdiction established by particular federal statutes

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 274.1

Specific federal laws are the basis for federal question jurisdiction in some cases.[1] Thus, a lawsuit brought by Indian tribes against state and municipal defendants, seeking a declaration of ownership and the right to possess land in northern New York, and into which the United States intervened, is a civil action arising under the Constitution, laws, or treaties of the United States, for the purpose of a federal district court's exercise of original subject matter jurisdiction over it under the federal question statute, since, inter alia, the Indian Commerce Clause and the Treaty Clause under the United States Constitution has a broad impact on the authority or jurisdiction of Congress, and federal courts, over Indian matters.[2] An Indian tribe's action for a declaration that Oklahoma was without jurisdiction to enforce its law on a restricted allotment on which a bingo enterprise was situated is a "controversy" under a statute giving the district court original jurisdiction over civil actions by certain Indian tribes when the matter in controversy arises under the Constitution, laws, or treaties of the United States.[3] The district court lacks jurisdiction over an action brought against the Nuclear Regulatory Commission where the underlying issue concerned whether the plaintiff is a licensee and not the Commission's decision.[4]

Observation:

Two statutes cannot be read together to create federal jurisdiction.[5]

[FN1] [Starter Corp. v. Converse, Inc.](#), 84 F.3d 592 (2d Cir. 1996) (federal question jurisdiction under the Lanham Act); [Broughton Lumber Co. v. Columbia River Gorge Com'n](#), 975 F.2d 616 (9th Cir. 1992), as amended, (Dec. 2, 1992) (the Columbia River Gorge National Scenic Area Act was the appropriate basis for jurisdiction in a landowner's declaratory judgment case); [California Union Ins. Co. v. American Diversified Sav. Bank](#), 914 F.2d 1271, 18 Fed. R. Serv. 3d 139 (9th Cir. 1990) (the statute grants federal jurisdiction over any proceeding in which the Federal Savings and Loan Insurance Cor-

poration is party); [New Mexico v. Pueblo of Pojoaque](#), 30 Fed. Appx. 768 (10th Cir. 2002) (Indian Gaming Regulatory Act); [Transohio Sav. Bank v. Director, Office of Thrift Supervision](#), 967 F.2d 598 (D.C. Cir. 1992) (Administrative Procedure Act).

[FN2] [Canadian St. Regis Band of Mohawk Indians v. New York](#), 388 F. Supp. 2d 25 (N.D. N.Y. 2005)

[FN3] [United Keetoowah Band of Cherokee Indians v. State of Okl. ex rel. Moss](#), 927 F.2d 1170 (10th Cir. 1991).

[FN4] [General Atomics v. U.S. Nuclear Regulatory Com'n](#), 75 F.3d 536 (9th Cir. 1996); [California Save Our Streams Council, Inc. v. Yeutter](#), 887 F.2d 908 (9th Cir. 1989).

[FN5] [Columbia Gas Transmission Corp. v. Drain](#), 191 F.3d 552 (4th Cir. 1999).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 199

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
D. Venue

[Topic Summary Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  [271](#)

A.L.R. Library

A.L.R. Index, Declaratory Judgments or Relief

West's A.L.R. Digest, Declaratory Judgments §§[271](#)

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS IV D REF

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
D. Venue

[Topic Summary Correlation Table References](#)

§ 200. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  271

The general rules applying to venue^[1] apply in actions for declaratory judgments.^[2] A claim for declaratory relief does not itself constitute a cause of action for venue purposes; it is the underlying relief sought that determines venue.^[3]

Actions in contract are properly heard in the county in which the contract is executed^[4] or in the principal place of activity under the agreement.^[5] Where a declaratory judgment action is considered to be an action at law, the venue of such an action is in the county where the defendant resides.^[6]

Where the complaint alleges only a declaratory judgment and not injunctive relief, the action need not be brought in the county of the defendant city's domicile.^[7]

The venue for a declaratory judgment action seeking to prohibit a property manager from trespassing on property may be held appropriate in either the county where the manager resides or the county where the property is located.^[8]

A statute governing venue in "an action brought in this state by or in behalf of the insured or beneficiary against an insurer" does not apply to a declaratory judgment action brought by an insurance company against an insured.^[9]

[FN1] As to venue, generally, see [Am. Jur. 2d, Venue §§ 1 to 7](#).

[FN2] *Ex parte Ambrose*, 813 So. 2d 806 (Ala. 2001) (venue is proper in the county where the defendant resides); *Mobley v. Armstrong*, 978 S.W.2d 307 (Ky. 1998), as modified, (Oct. 22, 1998) (alleged county of residence for a candidate is the proper venue); *In re Continental Airlines, Inc.*, 988 S.W.2d 733 (Tex. 1998); *Bergin v. Texas Beef Group*, 339 S.W.3d 312 (Tex. App. Amarillo 2011) (an action for declaratory judgment is governed by the general venue rules for civil actions).

[FN3] *Mercury Ins. Co. of Florida v. Jackson*, 46 So. 3d 1129 (Fla. 1st DCA 2010).

[FN4] *Antin-Quealy, Inc. v. WTA Marine, Inc.*, 735 So. 2d 623 (La. 1999); *Spear v. Nicholson*, 882 P.2d 1237 (Wyo. 1994).

[FN5] *Tractor & Equipment Co. v. Zerbe Bros.*, 2001 MT 162, 306 Mont. 111, 32 P.3d 721 (2001).

[FN6] *Harper v. Gunby*, 215 Ga. 466, 111 S.E.2d 85 (1959).

[FN7] *In re City of Dallas*, 977 S.W.2d 798 (Tex. App. Fort Worth 1998).

[FN8] *Walden v. ES Capital, LLC*, 89 So. 3d 90 (Ala. 2011).

[FN9] *Farm Bureau Mut. Ins. Co. of Arkansas, Inc. v. Gadbury-Swift*, 2010 Ark. 6, 362 S.W.3d 291 (2010).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 200

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
D. Venue

[Topic Summary Correlation Table References](#)

§ 201. Federal Declaratory Judgment Act

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 271

The Federal Declaratory Judgment Act makes no provision concerning venue; consequently, the venue of a suit under the Act is governed by the Judicial Code provision that a suit must be brought against the defendant in the district of which he or she is an inhabitant^[1] unless the action is based solely on diversity of citizenship, in which case it may be brought in the district of the residence of either the plaintiff or defendant.^[2]

[FN1] *Washington v. Hagan*, 287 F.2d 332 (3d Cir. 1960); *Barber-Greene Co. v. Blaw-Knox Co.*, 239 F.2d 774 (6th Cir. 1957).

[FN2] *Webster Co. v. Society for Visual Education*, 83 F.2d 47 (C.C.A. 7th Cir. 1936).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 201

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
D. Venue

[Topic Summary Correlation Table References](#)

§ 202. Actions against public officers or bodies

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 271

A.L.R. Library

[Venue of actions or proceedings against public officers, 48 A.L.R.2d 423](#)

The venue in an action against state officers generally lies only in the county in which the officers are located or their principal duties are performed.[1] The right to maintain an action or proceeding against a state officer in a county other than that in which the officer has his or her official residence, for declaratory relief against an official action, has in some cases been made to depend upon whether the property or rights of the plaintiff are being actually interfered with or immediately threatened therein.[2] A statute stating that a declaratory judgment suit against the metropolitan board of police commissioners would be appropriate in the city does not provide for exclusive venue, and the venue may be proper under a statute applicable to declaratory judgment actions regarding the validity of the city rules.[3]

[FN1] *Willis v. Circuit Court of Phillips County*, 342 Ark. 128, 27 S.W.3d 372 (2000).

[FN2] *Dowdy v. Lawton*, 72 So. 2d 50 (Fla. 1954).

[FN3] *State ex rel. Riordan v. Dierker*, 956 S.W.2d 258 (Mo. 1997).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 202

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
E. Parties

[Topic Summary Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  [291](#) to [306](#)

A.L.R. Library

A.L.R. Index, Declaratory Judgments or Relief

A.L.R. Index, Governmental Immunity or Privilege

West's A.L.R. Digest, Declaratory Judgments  [291](#) to [306](#)

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS IV E REF

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
E. Parties
1. State Courts

[Topic Summary Correlation Table References](#)

§ 203. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 291

Since a declaratory judgment statute generally does not expand the interests of the parties,[1] it does not relieve a party from showing that it has standing to bring a declaratory judgment action based on the underlying action.[2] A plaintiff seeking declaratory relief must demonstrate standing to raise the claim by establishing that it is not merely curious or concerned about the outcome but possesses some personal claim, status, or right, a distinct and palpable injury which is fairly traceable to the defendant's conduct and substantially likely to be prevented or redressed by the grant of such relief.[3] The party seeking declaratory relief must demonstrate that he or she has property or personal rights which will be affected by the court's decision[4] and that such rights are a legally protected interest which is concrete and particularized, actual or imminent, not conjectural or hypothetical,[5] and for which immediate determination of the rights of the parties is possible.[6] To establish a legal interest sufficient to maintain standing under the State Declaratory Judgment Act, a party must show that his or her rights are in direct issue or jeopardy; the party must show that the facts are complete and that the interest is not merely academic, hypothetical, or colorable but actual.[7] Indeed, an analysis of a plaintiff's standing to pursue a declaratory judgment action considers whether the plaintiff has alleged an injury in fact and, if so, whether the injury is to a legally protected or cognizable interest.[8]

Also, to establish standing in a declaratory judgment action, there must be an "actual controversy" between the adverse parties, and the party seeking the declaratory judgment must be "interested" in the controversy.[9] Accordingly, the courts will not entertain a declaratory relief action the sole object of which is to settle the rights of third persons who are not parties.[10]

A plaintiff's standing to claim declaratory relief and to assert a legally protectible interest is not impaired by the probability that ultimately he or she will not prevail.[11]

Under the Uniform Declaratory Judgments Act, either the plaintiff or the defendant may seek declaratory relief if there is a question regarding rights, status, or other legal relations arising under a written contract.[12]

[FN1] § 184.

[FN2] *Howard v. Montgomery Mut. Ins. Co.*, 145 Md. App. 549, 805 A.2d 1167 (2002); *Enos v. Secretary of Environmental Affairs*, 432 Mass. 132, 731 N.E.2d 525 (2000).

[FN3] *Gore v. Indiana Ins. Co.*, 376 Ill. App. 3d 282, 315 Ill. Dec. 156, 876 N.E.2d 156 (1st Dist. 2007).

[FN4] *In re Estate of Keller*, 273 Kan. 981, 46 P.3d 1135 (2002); *Kennedy v. Carlson*, 544 N.W.2d 1 (Minn. 1996); *Missouri Rural Elec. Co-op. v. City of Hannibal*, 938 S.W.2d 903 (Mo. 1997).

[FN5] *Ste. Genevieve School District R II v. Board of Aldermen of City of Ste. Genevieve*, 66 S.W.3d 6 (Mo. 2002).

[FN6] *Flynn v. Ryan*, 199 Ill. 2d 430, 264 Ill. Dec. 710, 771 N.E.2d 414 (2002); *Glisson v. City of Marion*, 188 Ill. 2d 211, 242 Ill. Dec. 79, 720 N.E.2d 1034 (1999).

[FN7] *Bailey v. City of Atlanta*, 296 Ga. App. 679, 675 S.E.2d 564 (2009).

[FN8] *Rector v. City and County of Denver*, 122 P.3d 1010 (Colo. App. 2005).

[FN9] *Morr-Fitz, Inc. v. Blagojevich*, 231 Ill. 2d 474, 327 Ill. Dec. 45, 901 N.E.2d 373 (2008).

[FN10] *Connerly v. Schwarzenegger*, 146 Cal. App. 4th 739, 53 Cal. Rptr. 3d 203 (3d Dist. 2007).

[FN11] *State ex rel. American Eagle Waste Industries v. St. Louis County*, 272 S.W.3d 336 (Mo. Ct. App. E.D. 2008).

[FN12] *Transportation Ins. Co. v. WH Cleaners, Inc.*, 372 S.W.3d 223 (Tex. App. Dallas 2012).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 203

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
E. Parties
1. State Courts

[Topic Summary Correlation Table References](#)

§ 204. Necessity of making all interested persons parties

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 292 to 298

A.L.R. Library

[Construction, application, and effect of sec. 11 of the Uniform Declaratory Judgments Act that all persons who have or claim any interest which would be affected by the declaration shall be made parties, 71 A.L.R.2d 723](#)

Under the Uniform Declaratory Judgments Act and related statutes, all interested persons must be made a party to a declaratory judgment action.[1] Before any proceeding for declaratory relief is entertained, all persons who have an actual, present, adverse, and antagonistic interest in the subject matter should be before the court.[2]] An interest which compels the joinder of a party in a declaratory judgment action is not one which is merely consequential, remote, or a conjectural possibility of being somehow affected by the result of an action; the interest at issue must be a direct claim upon the subject of the action such that the joined party will either gain or lose by the direct operation of the judgment rendered.[3] The courts require any entity or person with an existing or potential interest in the outcome of the action to be named as a party since declaratory judgment actions cannot bind nonparties.[4] Accordingly, when declaratory relief is sought, all persons must be made parties who have or claim any interest which would be affected by the declaration, and no declaration may prejudice the rights of persons not parties to the proceeding.[5]

A party's failure to join an interested and necessary party constitutes a jurisdictional defect that precludes the court from rendering a declaratory judgment.[6]

Observation:

The rule that a court will not render a declaratory judgment unless all persons having an interest in the subject matter of the complaint are parties to the action or have reasonable notice thereof is not merely a procedural regulation but, rather, is in recognition and implementation of the basic principle that due process of law requires that the rights of no person may be judicially determined without affording him or her a day in court and an op-

portunity to be heard.[7]

A "necessary party," or "indispensable party," whose presence as a party is required under the declaratory judgment statute is one who has an interest in the controversy to an extent that such party's absence from the proceedings prevents the court from making a final determination without affecting such party's interest.[8] The presence of the necessary parties in declaratory judgment actions is jurisdictional and cannot be waived, and if such persons are not made parties, then the court has no jurisdiction to determine the controversy.[9] Thus, when an indispensable party to a declaratory judgment action is not joined in the case, any judgment rendered in that party's absence is a nullity.[10]

The requirement that all interested persons must be made parties does not preclude the maintenance of a class action in which the interested persons appear by representation when the persons constituting the class are so numerous that it would be impracticable to bring them all before the court.[11]

[FN1] Unif. Declaratory Judgments Act § 11.

[FN2] *Bethel v. Security Nat. Ins. Co.*, 949 So. 2d 219 (Fla. 3d DCA 2006).

[FN3] *Moschenross v. St. Louis County*, 188 S.W.3d 13 (Mo. Ct. App. E.D. 2006).

[FN4] *Constitution Associates v. New Hampshire Ins. Co.*, 930 P.2d 556 (Colo. 1996), as modified on denial of reh'g, (Jan. 13, 1997); *Cicco v. Stockmaster*, 89 Ohio St. 3d 95, 2000-Ohio-434, 728 N.E.2d 1066 (2000).

[FN5] *Bosarge v. Louisiana Patient's Compensation Fund*, 960 So. 2d 1063 (La. Ct. App. 1st Cir. 2007).

[FN6] *Natl. Solid Wastes Mgt. Assn. v. Stark-Tuscarawas-Wayne Joint Solid Waste Mgt. Dist.*, 124 Ohio St. 3d 197, 2009-Ohio-6765, 920 N.E.2d 978 (2009).

[FN7] *Mattera v. Civil Service Com'n of City of Bridgeport*, 49 Conn. Supp. 224, 870 A.2d 483 (Super. Ct. 2005), judgment aff'd, 273 Conn. 235, 869 A.2d 637 (2005).

[FN8] *Dunn v. Daub*, 259 Neb. 559, 611 N.W.2d 97 (2000).

[FN9] *McCombs v. Haley*, 13 Neb. App. 729, 700 N.W.2d 659 (2005).

[FN10] *State ex rel. Missouri Parks Ass'n v. Missouri Dept. of Nat. Resources*, 316 S.W.3d 375 (Mo. Ct. App. W.D. 2010).

[FN11] *R.J. D'Hemecourt Petroleum, Inc. v. McNamara*, 444 So. 2d 600 (La. 1983); *Obstetricians-Gynecologists, P.C. v. Blue Cross and Blue Shield of Nebraska*, 219 Neb. 199, 361 N.W.2d 550 (1985).

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
E. Parties
1. State Courts

[Topic Summary Correlation Table References](#)

§ 205. Necessity of making all interested persons parties—Particular applications

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 293.1

The provision of the Uniform Declaratory Judgments Act that all persons must be made parties who have or claim any interest which would be affected by the declaration[1] has been applied to specific factual situations with the result that the courts have found a defect of parties, warranting dismissal or reversal, in cases involving the construction or validity of contracts,[2] including insurance contracts,[3] deeds and covenants,[4] wills and trusts or the administration of a decedent's estate,[5] and statutes or ordinances.[6]

Under the fact situations in other actions, the courts have found that no defect of parties existed in cases involving the validity or construction of contracts,[7] including insurance contracts,[8] deeds and covenants,[9] wills or trusts,[10] and statutes or ordinances.[11]

[FN1] § 204.

[FN2] *Crowley v. Duffrin*, 109 Nev. 597, 855 P.2d 536 (1993).

[FN3] *Rumbin v. Utica Mut. Ins. Co.*, 254 Conn. 259, 757 A.2d 526 (2000); *Fire Ins. Exchange v. Basten*, 202 Wis. 2d 74, 549 N.W.2d 690 (1996).

[FN4] *Pearson v. Virginia City Ranches Ass'n*, 2000 MT 12, 298 Mont. 52, 993 P.2d 688 (2000); *Lamb v. Wyoming Game and Fish Com'n*, 985 P.2d 433 (Wyo. 1999).

[FN5] *Paine v. Paine*, 446 A.2d 414 (Me. 1982); *Stanley v. Mueller*, 211 Or. 198, 315 P.2d 125, 71 A.L.R.2d 715 (1957).

[FN6] *Jacobs v. Yates*, 342 Ark. 243, 27 S.W.3d 734 (2000); *Olive v. Maas*, 811 So. 2d 644 (Fla. 2002); *Agan v. State*, 272 Ga. 540, 533 S.E.2d 60 (2000); *State v. Long*, 274 Kan. 1095, 58 P.3d 706 (2002).

[FN7] *Napoletano v. CIGNA Healthcare of Connecticut, Inc.*, 238 Conn. 216, 680 A.2d 127 (1996) (overruled on other grounds by, *Batte-Holmgren v. Commissioner of Public Health*, 281 Conn. 277, 914 A.2d 996 (2007)).

[FN8] *Richmond v. Hartford Underwriters Ins. Co.*, 126 Md. App. 166, 727 A.2d 968 (1999); *Metropolitan Property and Liability Ins. Co. v. Acord*, 195 W. Va. 444, 465 S.E.2d 901 (1995).

[FN9] *McCuskey v. Canyon County*, 123 Idaho 657, 851 P.2d 953 (1993); *Hagan v. Upper Republican Natural Resources Dist.*, 261 Neb. 312, 622 N.W.2d 627 (2001).

[FN10] *King v. Pinellas Central Bank & Trust Co.*, 339 So. 2d 712 (Fla. 2d DCA 1976); *Poindexter v. Wachovia Bank & Trust Co.*, 258 N.C. 371, 128 S.E.2d 867 (1963).

[FN11] *Deshotels v. State Professional Imp. Committee*, 430 So. 2d 1198, 11 Ed. Law Rep. 373 (La. Ct. App. 1st Cir. 1983), writ denied, 435 So. 2d 430 (La. 1983); *Lia v. Broadway/Olive Redevelopment Corp.*, 647 S.W.2d 189 (Mo. Ct. App. E.D. 1983).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 205

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
E. Parties
1. State Courts

[Topic Summary Correlation Table References](#)

§ 206. Executors and administrators, guardians, and other fiduciaries

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 298

Under the Uniform Declaratory Judgments Act, any person interested as or through an executor, administrator, trustee, guardian, or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust in the administration of a trust or of the estate of a decedent, an infant, a lunatic, or an insolvent may have a declaration of rights or legal relations in respect thereto.[1] A guardian has standing, as a person interested in the matter in controversy, to pursue a declaratory judgment concerning the constitutionality of a state statute, when he or she is seeking guidance from the court regarding his or her guardianship powers under state law.[2]

A foundation, as the devisee under a decedent's will, is a person interested in the administration of the decedent's estate and, thus, can permissibly seek declaratory relief to determine any question arising in the administration of the decedent's estate.[3] On the other hand, a widow lacks standing as a legatee of her late husband's estate to seek a declaratory judgment that her late husband owned 50% of the shares in a corporation, given that the estate had not been opened leaving title to any of her late husband's assets suspended, and the widow failed to join all other potential beneficiaries of the estate as required to maintain a declaratory judgment action.[4]

The rights of minors may be determined in a declaratory judgment proceeding provided they are represented by guardians ad litem or similar fiduciaries.[5]

[FN1] Unif. Declaratory Judgments Act § 4.

[FN2] *In re C.E.*, 161 Ill. 2d 200, 204 Ill. Dec. 121, 641 N.E.2d 345 (1994).

[FN3] *In re O'Quinn*, 355 S.W.3d 857 (Tex. App. Houston 1st Dist. 2011).

[FN4] *Shovers v. Shovers*, 2006 WI App 108, 292 Wis. 2d 531, 718 N.W.2d 130 (Ct. App. 2006).

[FN5] *Robinson v. Kansas State High School Activities Ass'n, Inc.*, 260 Kan. 136, 917 P.2d 836, 110

[Ed. Law Rep. 435 \(1996\).](#)

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 206

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
E. Parties
1. State Courts

[Topic Summary Correlation Table References](#)

§ 207. Taxpayers

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  293.1, 294

In some cases, a taxpayer has a sufficient interest to obtain a declaratory determination as to the validity of statutes or ordinances under which public authorities will proceed to levy taxes or make expenditures of public money.[1] In other cases, a taxpayer is not entitled to maintain a proceeding for a declaratory judgment in the absence of any showing of a real interest on his or her part in the subject matter of the litigation.[2] In denying standing, the courts reason that a taxpayer does not have a sufficient interest to maintain such an action where there is no showing that the statute or ordinance being questioned will increase his or her burden as a taxpayer.[3]] A court has held, however, that a direct effect on a taxpayer's bill is not required to show taxpayer standing.[4] Taxpayers may not be permitted to intervene in a case when the court feels that their interests are already adequately represented by the government defendant.[5]

A taxpayer may not intervene in a declaratory judgment action against the State where the disposition of the action would not impair or impede the taxpayer's ability to protect his or her interests given that the taxpayer could bring a separate action.[6]

[FN1] *Montanans For The Coal Trust v. State*, 2000 MT 13, 298 Mont. 69, 996 P.2d 856 (2000); *Salorio v. Glaser*, 82 N.J. 482, 414 A.2d 943 (1980); *Chileda Institute, Inc. v. City of La Crosse*, 125 Wis. 2d 554, 373 N.W.2d 43 (Ct. App. 1985).

[FN2] *Boettcher v. Balka*, 252 Neb. 547, 567 N.W.2d 95 (1997); *San Juan Water Com'n v. Taxpayers and Water Users of San Juan County*, 1993-NMSC-050, 116 N.M. 106, 860 P.2d 748 (1993).

[FN3] *Nebraska School Dist. No. 148 v. Lincoln Airport Authority*, 220 Neb. 504, 371 N.W.2d 258, 26 Ed. Law Rep. 802 (1985); *Newman v. Richland County Historic Preservation Com'n*, 325 S.C. 79, 480 S.E.2d 72 (1997).

[FN4] *Savage v. Munn*, 317 Or. 283, 856 P.2d 298 (1993).

[FN5] *City of Oklahoma City v. Oklahoma City Urban Renewal Authority*, 1999 OK 71, 988 P.2d 901 (Okla. 1999), as corrected, (Sept. 1, 1999).

[FN6] *State ex rel. Planned Parenthood of Kansas and Mid-Missouri v. Kinder*, 79 S.W.3d 905 (Mo. 2002).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 207

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
E. Parties
1. State Courts

[Topic Summary Correlation Table References](#)

§ 208. Government or public officers as plaintiffs

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  302.1 to 304

Declaratory judgment proceedings may be brought by the United States,[1] by a state[2] or a political subdivision thereof,[3] or by a municipality.[4] Where public officers seek a declaratory judgment questioning a law they are bound to apply, it must be shown that they are willing to perform their duties but are prevented from doing so by others; disagreement with a constitutional or statutory duty, or the means by which it is to be carried out, does not create a justiciable controversy or provide an occasion to give an advisory judicial opinion.[5]

A municipality does not have standing to adjudicate the constitutionality of an ordinance in a declaratory judgment proceeding since its enactments are presumptively constitutional as a matter of law.[6]

[FN1] *U.S. v. United Mine Workers of America*, 330 U.S. 258, 67 S. Ct. 677, 91 L. Ed. 884 (1947).

[FN2] *State ex rel. Hopkins v. Wooster*, 111 Kan. 830, 208 P. 656 (1922).

[FN3] *School Dist. of Kansas City v. Smith*, 342 Mo. 21, 111 S.W.2d 167 (1937).

[FN4] *Rosebud County v. Department of Revenue of State*, 257 Mont. 306, 849 P.2d 177 (1993); *City of Bells v. Greater Texoma Utility Authority*, 744 S.W.2d 636 (Tex. App. Dallas 1987).

Generally, as to the use of declaratory judgments to determine the powers of public and administrative officials, see §§ 77 to 87.

[FN5] *Department of Revenue of State of Fla. v. Markham*, 396 So. 2d 1120 (Fla. 1981).

[FN6] *City of Mishawaka v. Mohney*, 156 Ind. App. 668, 297 N.E.2d 858 (1973); *Whitehall Tp. v. Oswald*, 400 Pa. 65, 161 A.2d 348 (1960).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 208

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
E. Parties
1. State Courts

[Topic Summary Correlation Table References](#)

§ 209. Governmental bodies or public officers as defendants

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  302.1 to 304

The general principle of jurisprudence that a sovereign cannot be sued without the consent of the sovereign applies to states.[1] Just as an appellate court must determine the scope of review in an action for declaratory judgment from the nature of the dispute, so does such a court determine whether sovereign immunity lies.[2]

However, a state's sovereign immunity does not bar certain actions against state officers for injunctive or declaratory relief,[3] and a suit to restrain unconstitutional action by a state officer is not a suit against the State.[4] In addition, sovereign immunity does not apply to declaratory judgment proceedings against a county board when the action is between two segments of the state government.[5]

A school district's board of education is a necessary party to a county resident's action seeking a declaration that a board member acted without authority since the declaration as to the board member's authority would call into question the actions of the board.[6]

An action for a declaratory judgment will be dismissed if a governmental entity is an essential party and cannot be made a party to a suit.[7]

[FN1] Am. Jur. 2d, States, Territories, and Dependencies § 101.

[FN2] *Logan v. Department of Correctional Services*, 254 Neb. 646, 578 N.W.2d 44 (1998).

[FN3] Am. Jur. 2d, States, Territories, and Dependencies § 119.

[FN4] *Kroenlein v. Eddington*, 2001 WY 115, 35 P.3d 1207 (Wyo. 2001).

As to suits to restrain unconstitutional action by a state officer, see [Am. Jur. 2d, States, Territories, and Dependencies § 117](#).

[FN5] Board of County Com'rs of County of Laramie v. Laramie County School Dist. Number One, 884 P.2d 946, 95 Ed. Law Rep. 737 (Wyo. 1994).

[FN6] Kirton v. Dickerson, 34 Misc. 3d 595, 938 N.Y.S.2d 408, 276 Ed. Law Rep. 389 (Sup 2011).

[FN7] Stamps v. Jefferson County Bd. of Educ., 642 So. 2d 941, 94 Ed. Law Rep. 1077 (Ala. 1994); Dunn v. Daub, 259 Neb. 559, 611 N.W.2d 97 (2000); Thieman v. Bohman, 2002 SD 52, 645 N.W.2d 260 (S.D. 2002).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 209

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
E. Parties
1. State Courts

[Topic Summary Correlation Table References](#)

§ 210. Governmental bodies or public officers as defendants—Proceedings involving validity of municipal ordinances or franchises

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 302.1

Under the Uniform Declaratory Judgments Act, in any proceeding which involves the validity of a municipal ordinance or franchise, such municipality will be made a party to the action.[1] Therefore, a city is a statutorily necessary party in a declaratory judgment action involving the validity of a city ordinance.[2]

If a party alleges that a statute, ordinance, or franchise is unconstitutional, the attorney general of the state must also be served with a copy of the proceeding and be entitled to be heard,[3] but the Attorney General need not be named a party to the action.[4] This is true whether the statute is challenged on its face or only as applied to a particular person.[5] When challenging a statute, the plaintiff must show injury resulting to him- or herself from the statute.[6]

[FN1] Unif. Declaratory Judgments Act § 11.

[FN2] *Dunn v. Daub*, 259 Neb. 559, 611 N.W.2d 97 (2000).

[FN3] *Ohioans for Fair Representation, Inc. v. Taft*, 67 Ohio St. 3d 180, 1993-Ohio-218, 616 N.E.2d 905 (1993).

[FN4] *Ohioans for Fair Representation, Inc. v. Taft*, 67 Ohio St. 3d 180, 1993-Ohio-218, 616 N.E.2d 905 (1993).

For a discussion of notice requirements, see § 222.

[FN5] *Lazo v. Board of County Com'rs of Bernalillo County*, 1984-NMSC-111, 102 N.M. 35, 690 P.2d 1029 (1984).

[FN6] [Herring v. State ex rel. Oklahoma Tax Com'n, 1995 OK 28, 894 P.2d 1074 \(Okla. 1995\).](#)

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 210

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
E. Parties
1. State Courts

[Topic Summary Correlation Table References](#)

§ 211. Joinder of parties and causes

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 306

Declaratory judgment proceedings are generally considered equitable in their nature as to bring them within the rule of equity which permits a joinder of defendants where there is a community of interest in questions of law and fact and which makes inapplicable the common-law rule that there can be a joinder of defendants only where they are under a joint obligation or liability.[1] In addition, a state provision which was based on the federal rule dealing with permissive joinder of parties in civil proceedings[2] has been construed as giving broad authority for permissive joinder of defendants and as having been intended to extend to all civil actions the principles of permissive joinder which had been followed in equity, which authority is to be liberally construed in a declaratory judgment suit.[3] However, in order to join an action, the party seeking to join must have standing as a necessary party.[4]

In an action for a declaratory judgment in which it becomes apparent that not all interested persons have been made parties, the party seeking relief may join the absent party by amending its pleading.[5] Failure to join all necessary parties may result in the dismissal of the case.[6]

Persons will not be joined where their interests depend on the happening of a future event and are therefore merely hypothetical.[7]

Observation:

In some cases, special statutes may permit the joinder of parties even when one of the parties has been held to lack standing on its own.[8]

A state declaratory judgment law does not require the joinder as parties, in a declaratory action to determine the validity of a statute or ordinance, of any persons other than the public officers charged with the enforcement of the challenged statute or ordinance.[9]

[FN1] *Town of Manchester v. Town of Townshend*, 109 Vt. 65, 192 A. 22, 110 A.L.R. 811 (1937).

For a discussion of joinder of parties, see *Am. Jur. 2d, Parties* §§ 108 to 143.

[FN2] *Fed. R. Civ. P.* 20.

[FN3] As to joinder and intervention in declaratory judgment actions in federal courts, see §§ 213, 214.

As to joinder of parties, generally, see *Am. Jur. 2d, Parties* §§ 108 to 111.

[FN4] *Riverview Farm Associates Virginia General Partnership v. Board of Sup'rs of Charles City County*, 259 Va. 419, 528 S.E.2d 99 (2000).

[FN5] *Plumbers & Steamfitters Local Union 83 v. Union Local School Dist. Bd. of Edn.*, 86 Ohio St. 3d 318, 1999-Ohio-109, 715 N.E.2d 127 (1999).

[FN6] *Continental Cas. Co. v. Taco Bell Corp.*, 127 F. Supp. 2d 864 (W.D. Mich. 2001).

[FN7] *National Sav. Ins. Co. v. Gaskins*, 572 S.W.2d 573 (Tex. Civ. App. Fort Worth 1978).

[FN8] *Indiana Wholesale Wine & Liquor Co., Inc. v. State ex rel. Indiana Alcoholic Beverage Com'n*, 695 N.E.2d 99 (Ind. 1998).

[FN9] *Helgeland v. Wisconsin Municipalities*, 2008 WI 9, 307 Wis. 2d 1, 745 N.W.2d 1 (2008).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 211

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
E. Parties
1. State Courts

[Topic Summary Correlation Table References](#)

§ 212. Intervention

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 306

The courts have permitted parties to intervene in an action as a matter of right if the party seeking to intervene would otherwise have standing to join the action.[1] However, the motion to intervene may not be presented after the case has been dismissed.[2] Intervention is not appropriate if the party seeking to intervene in a case does not have proper standing in the declaratory judgment action.[3]

The intervention of a new party does not necessarily change the rights of the original parties to the action.[4]

A party may not be required to intervene in a declaratory judgment action if their issue of concern has not been litigated in the underlying action.[5]

A qui tam taxpayer will not be permitted to intervene on behalf of a city in a declaratory judgment proceeding brought by a city industrial authority to validate the authority's expenditure of public funds where the combined filings of the industrial authority, the developer who received the public funds, and the city presented a justiciable controversy to the trial court as measured against the taxpayer's qui tam request for relief.[6]

The qui tam taxpayer's burden, on intervention in a public body's declaratory judgment action, is to show the inadequacy of the presentation of the controversy to the court by the public body; an intervening taxpayer must show the insufficiency of the declaratory judgment petition as a condition precedent to a successful intervention in the declaratory judgment proceeding.[7]

[FN1] *Pinto v. Alabama Coalition for Equity*, 662 So. 2d 894, 104 Ed. Law Rep. 1403 (Ala. 1995); *Schrempp and Salerno v. Gross*, 247 Neb. 685, 529 N.W.2d 764 (1995).

[FN2] *Kleiner v. Kleiner*, 130 Idaho 930, 950 P.2d 1269 (1998).

[FN3] *Twomey v. Commissioner of Food & Agriculture*, 435 Mass. 497, 759 N.E.2d 691 (2001); *Citibank (South Dakota), N.A. v. State*, 1999 SD 124, 599 N.W.2d 402 (S.D. 1999); *Chelan County v. Nykreim*, 146 Wash. 2d 904, 52 P.3d 1 (2002).

[FN4] *Keokuk County v. H.B.*, 593 N.W.2d 118 (Iowa 1999).

[FN5] *Wilkerson v. Michael*, 104 Md. App. 730, 657 A.2d 818 (1995).

[FN6] *Tulsa Industrial Authority v. City of Tulsa*, 2011 OK 57, 270 P.3d 113 (Okla. 2011).

[FN7] *City of Broken Arrow v. Bass Pro Outdoor World, L.L.C.*, 2011 OK 1, 250 P.3d 305 (Okla. 2011), as corrected, (Jan. 19, 2011).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 212

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
E. Parties
2. Federal Courts

[Topic Summary Correlation Table References](#)

§ 213. Joinder and intervention of parties

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  299.1 to 301, 306

In declaratory judgment suits in federal courts, the general principles of joinder^[1] are fully applicable.^[2] The rule of indispensable parties states that all interested parties should be joined in a declaratory judgment action whenever possible.^[3] Thus, in deciding whether to entertain a declaratory judgment action, the court should consider whether all necessary parties have been joined.^[4]

While the court may refuse declaratory relief for nonjoinder of interested parties, it may order the joinder of additional parties if it appears that declaratory relief would be useful.^[5] If the party seeking to be joined in the lawsuit is adequately represented by another party to the lawsuit, then a joinder is not required,^[6] and intervention of a matter of right will be denied.^[7]

The court may permit intervention of a party as of right^[8] if the party has a significantly protectable interest.^[9]

The burden is on a county, as an entity seeking to intervene as of right in a federal action for declaratory and injunctive relief against the enforcement of an allegedly unconstitutional state law prohibiting same-sex marriages, to demonstrate its alleged financial interest in the outcome of the litigation, and where the county does not attempt to present evidence of that interest but instead asserts that the "precise extent of [its] financial interest [wa]s ultimately unknowable," the county does not satisfy its burden of proof.^[10]

^[FN1] Fed. R. Civ. P. 20.

For a discussion of joinder, generally, see [Am. Jur. 2d, Parties §§ 108 to 111](#).

^[FN2] [Diagnostic Unit Inmate Council v. Motion Picture Ass'n of America, Inc.](#), 953 F.2d 376 (8th Cir. 1992).

[FN3] National Union Fire Ins. Co. of Pittsburgh, PA v. Rite Aid of South Carolina, Inc., 210 F.3d 246, 46 Fed. R. Serv. 3d 527 (4th Cir. 2000); Home Ins. Co. of Illinois v. Adco Oil Co., 154 F.3d 739, 41 Fed. R. Serv. 3d 1229 (7th Cir. 1998); Virginia Sur. Co. v. Northrop Grumman Corp., 144 F.3d 1243, 40 Fed. R. Serv. 3d 1037 (9th Cir. 1998); Dainippon Screen Mfg. Co., Ltd. v. CFMT, Inc., 142 F.3d 1266, 40 Fed. R. Serv. 3d 700 (Fed. Cir. 1998).

[FN4] Diamond Shamrock Corp. v. Lumbermens Mut. Cas. Co., 416 F.2d 707 (7th Cir. 1969); ARW Exploration Corp. v. Aguirre, 947 F.2d 450 (10th Cir. 1991).

[FN5] Diagnostic Unit Inmate Council v. Motion Picture Ass'n of America, Inc., 953 F.2d 376 (8th Cir. 1992).

[FN6] ABKCO Music, Inc. v. LaVere, 217 F.3d 684 (9th Cir. 2000).

[FN7] Cedars-Sinai Medical Center v. Shalala, 125 F.3d 765, 38 Fed. R. Serv. 3d 1532 (9th Cir. 1997).

[FN8] Taylor Communications Group, Inc. v. Southwestern Bell Telephone Co., 172 F.3d 385, 43 Fed. R. Serv. 3d 977 (5th Cir. 1999); Transamerica Ins. Co. v. South, 125 F.3d 392 (7th Cir. 1997).

[FN9] Northwest Forest Resource Council v. Glickman, 82 F.3d 825, 34 Fed. R. Serv. 3d 1243 (9th Cir. 1996), as amended on denial of reh'g, (May 30, 1996).

[FN10] Perry v. Schwarzenegger, 630 F.3d 898, 78 Fed. R. Serv. 3d 450 (9th Cir. 2011).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 213

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
E. Parties
2. Federal Courts

[Topic Summary Correlation Table References](#)

§ 214. Standing to seek declaratory judgment

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 299.1 to 301, 306

To establish standing to bring a claim for declaratory relief, the plaintiff must show a very significant possibility of future harm.[1] The courts will dismiss the case when the plaintiff cannot show particular injury to itself.[2] A standing to pursue declaratory and injunctive relief does not automatically attach once an ongoing injury is identified.[3]

In addition to a showing of injury, the plaintiff must show that there is an actual controversy,[4] which can be redressed through declaratory relief.[5]

Since it is the underlying cause of action of the defendant against the plaintiff that is actually litigated in a declaratory judgment action, a party bringing a declaratory judgment action must have been a proper party had the defendant brought suit on the underlying cause of action.[6]

The rules with respect to standing in declaratory judgment actions have been applied to contract actions.[7]

Observation:

A child who was allegedly born out of wedlock to an alien mother and citizen father has been held to have standing to invoke the jurisdiction of the federal courts in order to challenge the constitutionality of a statute governing the citizenship of children who were born abroad and out of wedlock to parents such as hers where the child did not request that the court grant her citizenship but instead sought a declaration that the statute was unconstitutional and a finding by the court that she was a citizen from birth.[8]

[FN1] *Grendell v. Ohio Supreme Court*, 252 F.3d 828, 2001 FED App. 0186P (6th Cir. 2001); *Canatella v. State of California*, 304 F.3d 843 (9th Cir. 2002); *Morgan v. County of Nassau*, 720 F. Supp. 2d 229 (E.D. N.Y. 2010).

[FN2] *Lawson v. Callahan*, 111 F.3d 403 (5th Cir. 1997); *Bowen v. First Family Financial Services, Inc.*, 233 F.3d 1331 (11th Cir. 2000); *Campbell v. Clinton*, 203 F.3d 19 (D.C. Cir. 2000).

[FN3] *Perry v. Sheahan*, 222 F.3d 309 (7th Cir. 2000).

[FN4] *National Rifle Ass'n of America v. Magaw*, 132 F.3d 272 (6th Cir. 1997); *Whitlock Const., Inc. v. Glickman*, 12 Fed. Appx. 636 (10th Cir. 2001).

[FN5] *Robidoux v. Celani*, 987 F.2d 931, 25 Fed. R. Serv. 3d 86 (2d Cir. 1993).

[FN6] *Collin County, Tex. v. Homeowners Ass'n for Values Essential to Neighborhoods, (HAVEN)*, 915 F.2d 167 (5th Cir. 1990); *Mylan Pharmaceuticals, Inc. v. Thompson*, 268 F.3d 1323 (Fed. Cir. 2001).

[FN7] *Dixon v. Edwards*, 290 F.3d 699 (4th Cir. 2002); *Blue Ridge Ins. Co. v. Stanewich*, 142 F.3d 1145 (9th Cir. 1998); *Borg-Warner Protective Services Corp. v. E.E.O.C.*, 245 F.3d 831 (D.C. Cir. 2001).

[FN8] *Miller v. Albright*, 523 U.S. 420, 118 S. Ct. 1428, 140 L. Ed. 2d 575 (1998).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 214

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
E. Parties
2. Federal Courts

[Topic Summary Correlation Table References](#)

§ 215. Governmental body or officers as parties

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  302.1 to 304

The federal government is entitled to sue for declaratory relief under the Federal Declaratory Judgment Act,[1] but the doctrine of sovereign immunity precludes a declaratory judgment suit against the United States,[2] a state,[3] or a territory[4] except where such immunity has been waived.[5] The Federal Declaratory Judgment Act does not constitute the United States' consent to be sued for declaratory relief.[6]

Where a plaintiff seeks a declaration that a particular statute is unconstitutional, the proper defendants are the government officials charged with administering and enforcing it.[7] State or county officials who are entitled to qualified immunity in their individual capacities are subject to a claim for declaratory relief.[8]

The traditional rules for standing also apply to claims against government officials; accordingly (1) the declaratory plaintiff must show actual injury and the likelihood of future harm;[9] (2) all necessary and indispensable parties must be joined to the action;[10] and (3) the case must involve an actual controversy.[11]

[FN1] *Teplitzky v. Bureau of Compensation U. S. Dept. of Labor*, 288 F. Supp. 310 (S.D. N.Y. 1968), judgment modified on other grounds, 398 F.2d 820 (2d Cir. 1968).

[FN2] *Innes v. Hiatt*, 57 F. Supp. 17 (M.D. Pa. 1944).

[FN3] *Starr v. Schram*, 143 F.2d 561 (C.C.A. 6th Cir. 1944); *Croatan Books, Inc. v. Com. of Va.*, 574 F. Supp. 880 (E.D. Va. 1983).

[FN4] *Crain v. Government of Guam*, 195 F.2d 414 (9th Cir. 1952).

[FN5] *U.S. v. Transamerica Ins. Co.*, 357 F. Supp. 743 (E.D. Va. 1973).

[FN6] *Morpurgo v. Board of Higher Ed. in City of New York*, 423 F. Supp. 704 (S.D. N.Y. 1976); *B.R.*

MacKay & Sons, Inc. v. U.S., 633 F. Supp. 1290 (D. Utah 1986).

[FN7] New Hampshire Right to Life Political Action Committee v. Gardner, 99 F.3d 8 (1st Cir. 1996); Michigan Bell Telephone Co. v. Climax Telephone Co., 202 F.3d 862, 2000 FED App. 0025A (6th Cir. 2000), as amended on denial of reh'g and reh'g en banc, (Feb. 16, 2000); Socialist Workers Party v. Leahy, 145 F.3d 1240 (11th Cir. 1998).

[FN8] Adler v. Pataki, 185 F.3d 35 (2d Cir. 1999); Board of County Com'rs of County of Laramie v. Laramie County School Dist. Number One, 884 P.2d 946, 95 Ed. Law Rep. 737 (Wyo. 1994).

[FN9] Wiley v. Mayor and City Council of Baltimore, 48 F.3d 773 (4th Cir. 1995); City of New York v. C.I.R., 70 F.3d 142 (D.C. Cir. 1995).

[FN10] Kickapoo Tribe of Indians of Kickapoo Reservation in Kansas v. Babbitt, 43 F.3d 1491, 31 Fed. R. Serv. 3d 701 (D.C. Cir. 1995).

[FN11] North Jefferson Square Associates, L.P. v. Virginia Housing Development Authority, 32 Fed. Appx. 684 (4th Cir. 2002); Campbell v. Clinton, 203 F.3d 19 (D.C. Cir. 2000).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 215

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
E. Parties
2. Federal Courts

[Topic Summary Correlation Table References](#)

§ 216. Class actions

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  305

Declaratory relief is not appropriate in a class action where the party opposing the class has acted or refused to act on grounds generally applicable to the class and where the final relief relates exclusively or predominantly to money damages.[1]

If an organization's members lack standing to sue on their own behalf, then the organization itself lacks standing to sue on behalf of its members.[2]

[FN1] *James v. City of Dallas, Tex.*, 254 F.3d 551, 50 Fed. R. Serv. 3d 157 (5th Cir. 2001).

[FN2] *Public Citizen, Inc. v. Bomer*, 274 F.3d 212 (5th Cir. 2001).

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
F. Pleadings, in General

[Topic Summary Correlation Table](#)

Research References


West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  [311](#) to [329](#)

A.L.R. Library

A.L.R. Index, Declaratory Judgments or Relief

A.L.R. Index, Pleadings

West's A.L.R. Digest, Declaratory Judgments  [311](#) to [329](#)

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS IV F REF

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
F. Pleadings, in General

[Topic Summary Correlation Table References](#)

§ 217. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  311

Forms

[Am. Jur. Pleading and Practice Forms, Federal Practice and Procedure § 1356](#) (Complaint—For declaratory judgment—General form)

The Uniform Declaratory Judgments Act contains no specific provision as to the pleadings in proceedings thereunder, and the Federal Declaratory Judgment Act provides only, as far as pleadings are concerned, that the courts of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal duties of any interested party seeking a declaration.[1] It follows that the requirements of pleading and practice in actions for declaratory relief are exactly the same as in other civil actions, including the requirement that the action is commenced by filing a complaint.[2] Indeed, actions for declaratory relief are governed by the same liberal pleading standards that are applied in other civil actions;[3] thus, as in any other action, an issue may be directly, or impliedly, raised by the pleadings.[4]

The declaratory judgment statutes do not abrogate the ordinary rules of pleading, practice, procedure, and evidence; thus, even the most liberal construction that can be placed upon such statutes will not warrant the courts in granting affirmative relief by way of a declaratory judgment in the absence of pleading and proof warranting such relief.[5]

[FN1] 28 U.S.C.A. § 2201.

[FN2] *Kam-Ko Bio-Pharm Trading Co. Ltd-Australasia v. Mayne Pharma (USA) Inc.*, 560 F.3d 935 (9th Cir. 2009); *Thomas v. Blue Cross and Blue Shield Ass'n*, 594 F.3d 823 (11th Cir. 2010); *Vaughters v. Outlaw*, 293 Ga. App. 620, 668 S.E.2d 13 (2008).

[FN3] *Stew-Mc Development, Inc. v. Fischer*, 770 N.W.2d 839 (Iowa 2009); *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 858 P.2d 1258 (1993).

[FN4] *Stew-Mc Development, Inc. v. Fischer*, 770 N.W.2d 839 (Iowa 2009).

[FN5] *Hanks v. Corson County Bd. of County Com'rs*, 2007 SD 10, 727 N.W.2d 296 (S.D. 2007).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 217

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
F. Pleadings, in General

Topic Summary Correlation Table References

§ 218. Complaint or petition

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 312.1 to 321

Forms

[Am. Jur. Pleading and Practice Forms, Declaratory Judgments §§ 8, 10, 11, 14, 32, 35](#) (Complaint, petition, or declaration—To determine rights)

[Am. Jur. Pleading and Practice Forms, Federal Practice and Procedure §§ 1356 to 1368](#) (Complaint—For declaratory judgment)

An action for declaratory judgment must satisfy the well-pleaded complaint rule.[1] The test for the sufficiency of a complaint for declaratory judgment is not whether the plaintiff will succeed in obtaining the decree he or she seeks favoring his or her position but whether the plaintiff is entitled to a declaration of rights at all.[2] A proper complaint for declaratory relief must disclose a legal right, relation, status, or interest claimed by the plaintiff over which a dispute with the defendant has arisen,[3] and the request for relief must be made in the pleadings.[4] However, declaratory relief cannot be granted by motion;[5] indeed, a party cannot file a pretrial motion to obtain a declaratory judgment.[6] A complaint seeking declaratory relief must allege ultimate facts showing that there is a bona fide adverse interest between the parties concerning a power, privilege, immunity, or right of the plaintiff; the plaintiff's doubt about the existence or nonexistence of his or her rights or privileges; and that he or she is entitled to have the doubt removed.[7] Also, the complaint for declaratory relief must recite in sufficient detail an actual and legal controversy between the parties and must demonstrate that the plaintiff is interested in the pleadings.[8]

The plaintiff seeking a declaratory judgment must allege facts sufficient to confer standing on the face of the complaint;[9] however, some defects in the pleading will not defeat a request for declaratory judgment.[10] In addition, the court may act pursuant to the Uniform Declaratory Judgments Act to protect a party even when the claimant has not specifically requested the court to do so.[11]

A county is not required to verify a complaint seeking a declaratory ruling that the defendant businesses unlawfully operated unlicensed sexually oriented businesses in locations prohibited by the county ordinance where

no statute required the verification of a complaint seeking declaratory relief.[12]

Observation:

Petitions for declaratory relief must be liberally construed so as to effectuate the evident purpose of the law.[13]

[FN1] *City of Huntsville v. City of Madison*, 24 F.3d 169 (11th Cir. 1994); *Mylan Pharmaceuticals, Inc. v. Thompson*, 268 F.3d 1323 (Fed. Cir. 2001).

For a discussion of the well-pleaded complaint rule with respect to actions for declaratory judgment in federal court, see § 198.

[FN2] *Citizens Property Ins. Corp. v. Ifergane*, 114 So. 3d 190 (Fla. 3d DCA 2012); *Dujakovich v. Carnahan*, 370 S.W.3d 574 (Mo. 2012).

[FN3] *Heimann v. National Elevator Industry Pension Fund*, 187 F.3d 493 (5th Cir. 1999) (rejected by, *Becker v. Mack Trucks, Inc.*, 281 F.3d 372 (3d Cir. 2002)) and (overruled on other grounds by, *Arana v. Ochsner Health Plan*, 338 F.3d 433 (5th Cir. 2003)) and (holding modified on other grounds by, *Hoskins v. Bekins Van Lines*, 343 F.3d 769, 199 A.L.R. Fed. 743 (5th Cir. 2003)).

[FN4] *Dillard v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 961 F.2d 1148 (5th Cir. 1992); *Doe v. Attorney General of U.S.*, 941 F.2d 780 (9th Cir. 1991) (disapproved of on other grounds by, *Lane v. Pena*, 518 U.S. 187, 116 S. Ct. 2092, 135 L. Ed. 2d 486, 16 A.D.D. 1 (1996)).

[FN5] *Barmat, Inc. v. U.S.*, 159 F.R.D. 578 (N.D. Ga. 1994).

[FN6] *Zimmer v. Vander Waal*, 780 N.W.2d 730 (Iowa 2010).

[FN7] *Rosenkrantz v. Feit*, 81 So. 3d 526 (Fla. 3d DCA 2012).

[FN8] *Best v. Taylor Mach. Works*, 179 Ill. 2d 367, 228 Ill. Dec. 636, 689 N.E.2d 1057 (1997).

[FN9] *Parker v. Town of Milton*, 169 Vt. 74, 726 A.2d 477 (1998).

[FN10] *Hoiengs v. County of Adams*, 245 Neb. 877, 516 N.W.2d 223 (1994).

[FN11] *Goodrich v. Stobbe*, 908 P.2d 416 (Wyo. 1995).

[FN12] *Pitt County v. Dejavue, Inc.*, 185 N.C. App. 545, 650 S.E.2d 12 (2007).

[FN13] *Kessler v. Gleich*, 156 N.H. 488, 938 A.2d 80 (2007).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 218

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
F. Pleadings, in General

[Topic Summary Correlation Table References](#)

§ 219. Statement of controversy

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  313

Forms

[Am. Jur. Pleading and Practice Forms, Declaratory Judgments § 41](#) (Motion—To dismiss action—No basis for declaratory relief—Failure of complaint to allege justiciable controversy)

[Am. Jur. Pleading and Practice Forms, Declaratory Judgments § 47](#) (Order—Dismissal of complaint—Failure to allege justiciable controversy—Question dependent on future events)

Merely alleging the existence of an actual controversy is not sufficient to state a claim for a declaratory judgment unless the claim is also ripe for judicial decision.[1] The courts have jurisdiction to render declaratory judgments only when the complaint demonstrates the existence of an actual controversy.[2] An "actual controversy" exists, for the purposes of a declaratory judgment, where a plaintiff pleads and proves facts demonstrating an adverse interest necessitating a judgment to preserve the plaintiff's legal rights.[3]

A successful complaint for declaratory judgment must include a statement of controversy in which the plaintiff must allege facts from which it appears there is a ripe controversy[4] and substantial likelihood that he or she will suffer injury in the future.[5] In determining whether the plaintiff's complaint alleges a bona fide justiciable controversy, which is required for a court to have subject matter jurisdiction over a declaratory judgment action, the court must accept the allegations of the complaint as true and must also view the allegations of the complaint most strongly in the plaintiff's favor.[6] Part of showing a justiciable controversy for declaratory judgment purposes is pointing to specific factual allegations which, under all the circumstances, show that there is a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.[7] Also, the request for declaratory relief must specifically include the facts of the respective claims concerning the underlying subject of the case[8] and must demonstrate that the plaintiff is interested in the controversy.[9]

Although a complainant need not necessarily possess a cause of action as a basis for obtaining declaratory relief, nevertheless, he or she must, as a minimum requirement, possess a bona fide legal interest which has

been, or with respect to the "ripening seeds of a controversy" is about to be, affected in a prejudicial manner.[10]

[FN1] *Klehr v. Illinois Farmers Ins. Co.*, 2013 IL App (1st) 121843, 368 Ill. Dec. 578, 984 N.E.2d 524 (App. Ct. 1st Dist. 2013), appeal pending, (May 1, 2013).

[FN2] *New Bar Partnership v. Martin*, 729 S.E.2d 675 (N.C. Ct. App. 2012).

[FN3] *Lash v. City of Traverse City*, 479 Mich. 180, 735 N.W.2d 628 (2007).

[FN4] *Burlington Northern R. Co. v. Crow Tribal Council*, 940 F.2d 1239 (9th Cir. 1991).

[FN5] *Burlington Northern R. Co. v. Crow Tribal Council*, 940 F.2d 1239 (9th Cir. 1991); *Malowney v. Federal Collection Deposit Group*, 193 F.3d 1342 (11th Cir. 1999).

[FN6] *Gulf Beach Hotel, Inc. v. State ex rel. Whetstone*, 935 So. 2d 1177 (Ala. 2006).

[FN7] *Green v. Nassif*, 426 Md. 258, 44 A.3d 321 (2012), cert. denied, 133 S. Ct. 618, 184 L. Ed. 2d 395 (2012).

[FN8] *City of Cotati v. Cashman*, 29 Cal. 4th 69, 124 Cal. Rptr. 2d 519, 52 P.3d 695 (2002).

[FN9] *Best v. Taylor Mach. Works*, 179 Ill. 2d 367, 228 Ill. Dec. 636, 689 N.E.2d 1057 (1997).

[FN10] *McCaughtry v. City of Red Wing*, 808 N.W.2d 331 (Minn. 2011).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 219

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
F. Pleadings, in General

Topic Summary Correlation Table References

§ 220. Adequacy of pleadings in particular types of cases

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 312.1 to 321

The courts have held that plaintiffs have adequately stated a claim for declaratory relief in various cases involving statutes,[1] insurance,[2] contracts,[3] and real property.[4]

In other cases, the courts have found that the plaintiffs failed to adequately state a claim for declaratory relief in cases involving contracts,[5] a state constitution,[6] insurance,[7] property,[8] and copyright.[9]

[FN1] *Bliley v. Kelly*, 23 F.3d 507 (D.C. Cir. 1994); *Earl v. Mills*, 275 Ga. 503, 570 S.E.2d 282 (2002).

[FN2] *U.S. Fidelity & Guar. Co. v. Executive Ins. Co.*, 893 F.2d 517 (2d Cir. 1990); *American Cas. Co. of Reading, Pennsylvania v. Krieger*, 181 F.3d 1113 (9th Cir. 1999).

[FN3] *State v. Huntington-Cleveland Irrigation Co.*, 2002 UT 75, 52 P.3d 1257 (Utah 2002).

[FN4] *Creola Land Development, Inc. v. Bentbrooke Housing, L.L.C.*, 828 So. 2d 285 (Ala. 2002).

[FN5] *National Operating, L.P. v. Mutual Life Ins. Co. of New York*, 2001 WI 87, 244 Wis. 2d 839, 630 N.W.2d 116, 45 U.C.C. Rep. Serv. 2d 250 (2001).

[FN6] *Cicco v. Stockmaster*, 89 Ohio St. 3d 95, 2000-Ohio-434, 728 N.E.2d 1066 (2000).

[FN7] *Home Ins. Co. v. Townsend*, 22 F.3d 91 (5th Cir. 1994).

[FN8] *Cook v. Hansen*, 499 N.W.2d 94, 21 U.C.C. Rep. Serv. 2d 878 (N.D. 1993).

[FN9] *Hal Roach Studios, Inc. v. Richard Feiner and Co., Inc.*, 896 F.2d 1542 (9th Cir. 1989).

AMJUR DECLJUDS § 220

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014

Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
F. Pleadings, in General

[Topic Summary Correlation Table References](#)

§ 221. Prayer for relief

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  321

The prayer for relief must state with precision the declaratory relief desired and must be based upon the facts alleged in the complaint or petition.[1] A boilerplate prayer for relief is insufficient to convert a declaratory judgment action into some other type of lawsuit.[2]

Prayers for relief may not be construed liberally to add prayers to the complaint which the plaintiff did not originally request.[3]

Observation:

Under the Federal Rule of Civil Procedure governing judgments and demand therefor,[4] a court may render a declaratory judgment even though such relief was not demanded in the complaint.[5]

CUMULATIVE SUPPLEMENT

Cases:

The issuance of a declaratory judgment does not depend on the specificity of a party's request for ancillary relief to enforce the declaration. [West's Ann.Md.Code, Courts and Judicial Proceedings, § 3–403\(a\). Falls Road Community Ass'n, Inc. v. Baltimore County, 437 Md. 115, 85 A.3d 185 \(2014\).](#)

[END OF SUPPLEMENT]

[FN1] [Sturtevant v. Sturtevant, 146 Conn. 644, 153 A.2d 828, 79 A.L.R.2d 604 \(1959\).](#)

[FN2] [U.S. v. City of Las Cruces, 289 F.3d 1170 \(10th Cir. 2002\).](#)

[FN3] [Step-Saver Data Systems, Inc. v. Wyse Technology, 912 F.2d 643, 12 U.C.C. Rep. Serv. 2d 343](#)

(3d Cir. 1990).

[FN4] Fed. R. Civ. P. 54(c).

[FN5] *Dann v. Studebaker-Packard Corp.*, 288 F.2d 201, 4 Fed. R. Serv. 2d 121 (6th Cir. 1961) (disapproved of on other grounds by, *J. I. Case Co. v. Borak*, 377 U.S. 426, 84 S. Ct. 1555, 12 L. Ed. 2d 423 (1964)).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 221

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
F. Pleadings, in General

Topic Summary Correlation Table References

§ 222. Notice

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  311

Failure to give notice to all persons having an interest in the subject matter of the declaratory judgment complaint deprives the trial court of subject matter jurisdiction to render a declaratory judgment^[1] unless the person is a party to the action or the parties' interest is adequately represented in the case.^[2]

A declaratory judgment action is not itself precluded by a failure to comply with the notice requirement;^[3] rather, the plaintiff may ask for an order of notice in order to comply with the procedural requirements with respect to individuals whose identity might otherwise be difficult to ascertain.^[4] Indeed, there is authority holding that any jurisdictional defect caused by the plaintiff's failure to comply with the notice requirement for declaratory judgment may be cured by the subsequent invitation to the attorney general to participate in the proceeding.^[5] A defendant may not assert failure of notice if he or she submits to the court's jurisdiction by filing a motion to dismiss.^[6]

An action for declaratory judgment, in which the court is asked to consider the constitutionality of a statute, must assert the constitutional claim in the complaint or other initial pleading and must serve a copy of the pleading upon the Attorney General.^[7]

The failure to notify interested persons in a declaratory judgment action does not implicate the court's subject matter jurisdiction.^[8]

[FN1] *Massameno v. Statewide Grievance Committee*, 234 Conn. 539, 663 A.2d 317 (1995).

[FN2] *Massameno v. Statewide Grievance Committee*, 234 Conn. 539, 663 A.2d 317 (1995).

[FN3] *Serrani v. Board of Ethics of City of Stamford*, 225 Conn. 305, 622 A.2d 1009 (1993) (holding modified on other grounds by, *Batte-Holmgren v. Commissioner of Public Health*, 281 Conn. 277, 914 A.2d 996 (2007)).

[FN4] *Massameno v. Statewide Grievance Committee*, 234 Conn. 539, 663 A.2d 317 (1995).

[FN5] *Castellani v. Bailey*, 218 Wis. 2d 245, 578 N.W.2d 166, 117 A.L.R.5th 643 (1998).

[FN6] *Fischer v. Governor*, 145 N.H. 28, 749 A.2d 321 (2000).

[FN7] *Cicco v. Stockmaster*, 89 Ohio St. 3d 95, 2000-Ohio-434, 728 N.E.2d 1066 (2000).

[FN8] *South Windsor Cemetery Ass'n, Inc. v. Lindquist*, 114 Conn. App. 540, 970 A.2d 760 (2009).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 222

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
F. Pleadings, in General

Topic Summary Correlation Table References

§ 223. Answer

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  322

Forms

[Am. Jur. Pleading and Practice Forms, Declaratory Judgments § 44](#) (Answer—Lack of federal jurisdiction—Pending state action involving same parties and issues)

[Am. Jur. Pleading and Practice Forms, Federal Practice and Procedure § 1371](#) (Answer—With affirmative defense—Pending action involving same parties and issues)

An answer or responsive pleading should be filed in a declaratory judgment action to advance it on the calendar.^[1] The courts may consider affirmative defenses raised by declaratory plaintiffs,^[2] and in at least one jurisdiction, the court may apply certain remedies even if the plaintiff did not plead them as an affirmative defense.^[3] In other jurisdictions, however, failure to raise an affirmative defense may be treated as a waiver of the defense.^[4]

Any defenses a party has, whether legal or equitable, may be interposed in a declaratory judgment action.^[5] Justiciability doctrines of standing, ripeness, mootness, and political question are viable defenses in a declaratory judgment action.^[6]

[FN1] *Drinan v. Nixon*, 364 F. Supp. 853, 17 Fed. R. Serv. 2d 222 (D. Mass. 1973), *aff'd*, 502 F.2d 1158 (1st Cir. 1973).

[FN2] *BASF Corp. v. Symington*, 50 F.3d 555 (8th Cir. 1995).

[FN3] *Bassett v. Harrison*, 146 Md. App. 600, 807 A.2d 695 (2002).

[FN4] *Jones v. Chagrin Falls*, 77 Ohio St. 3d 456, 1997-Ohio-253, 674 N.E.2d 1388 (1997).

[FN5] *Abbott Laboratories v. Gardner*, 387 U.S. 136, 87 S. Ct. 1507, 18 L. Ed. 2d 681 (1967) (abrogated on other grounds by, *Califano v. Sanders*, 430 U.S. 99, 97 S. Ct. 980, 51 L. Ed. 2d 192 (1977)).

[FN6] *Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827 (Tenn. 2008).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 223

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
F. Pleadings, in General

[Topic Summary Correlation Table References](#)

§ 224. Counterclaim or cross-complaint filed in declaratory judgment suit

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 322, 323

Although the Uniform Act does not provide for counterclaims or cross petitions, the courts have permitted defendants with proper standing to assert a counterclaim seeking a declaratory judgment^[1] or in a cross-complaint.^[2] Under the Federal Declaratory Judgment Act, whenever cross-claims and counterclaims arise out of the transaction or occurrence which is the subject matter of the original declaratory judgment action, the cross-claims and counterclaims are properly adjudicated as part of the declaratory judgment action without an independent jurisdictional basis.^[3]

In an action in which the plaintiff does not seek declaratory relief but seeks some other kind of relief, a counterclaim or cross-complaint may nevertheless seek declaratory relief.^[4]

A declaratory judgment counterclaim may only be brought to resolve an actual controversy, which must be extant at all stages of review and not merely at the time the complaint is filed.^[5]

[FN1] *Backus v. Howard W. Backus Towing, Inc.*, 391 So. 2d 378 (Fla. 3d DCA 1980).

[FN2] *Master v. Master*, 223 Md. 618, 166 A.2d 251 (1960); *Recall Bennett Committee v. Bennett*, 196 Or. 299, 249 P.2d 479 (1952).

[FN3] *Plains Ins. Co. v. Sandoval*, 35 F.R.D. 293, 8 Fed. R. Serv. 2d 13,211, Case 1 (D. Colo. 1964); *Fireman's Fund Ins. Co. v. Trobaugh*, 52 F.R.D. 31 (W.D. Okla. 1971).

[FN4] *Altvater v. Freeman*, 319 U.S. 359, 63 S. Ct. 1115, 87 L. Ed. 1450 (1943); *Greenwell v. Terra Nova*, 314 Ky. 813, 236 S.W.2d 883 (1951).

[FN5] *Atlantic Richfield Co. v. Farm Credit Bank of Wichita*, 226 F.3d 1138 (10th Cir. 2000).

rights reserved.

AMJUR DECLJUDS § 224

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
F. Pleadings, in General

[Topic Summary Correlation Table References](#)

§ 225. Amendment of pleadings

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 324

The procedure and practice with respect to amendments in declaratory judgment actions is similar to that prevailing in ordinary actions at law and suits in equity.[1] The courts may permit a party to amend its complaint rather than refuse relief on the ground of lack of jurisdiction.[2] The courts should permit a motion to amend a declaratory judgment complaint when the movant seeks to add a legitimate claim.[3]

While the court has discretionary power to refuse to enter a declaratory judgment which does not terminate the uncertainty or controversy giving rise to the proceeding,[4] an amendment, rather than dismissal, of the complaint is preferable where the entire controversy between the parties can thus be brought before the court for complete and final disposition.[5] The courts may permit a defendant to amend his or her answer after the deadline for filing in order to add affirmative defenses, if the plaintiff does not suffer any harm[6] or if the opposing party consents to the late motion to amend.[7] The motion to amend must, however, be filed before the court enters its judgment.[8]

Futility has been held to preclude approval of the amendment of a complaint seeking a declaratory judgment allowing for use of digital video recorders, to remove as plaintiffs users whom the copyright holders had promised not to sue as part of the settlement with a video recorder manufacturer, and to replace them with users not explicitly covered by the promise where the likelihood that the copyright owners would take action against the substituted users was too remote to satisfy the case or controversy requirement.[9]

[FN1] *Maguire v. Hibernia Savings & Loan Soc.*, 23 Cal. 2d 719, 146 P.2d 673, 151 A.L.R. 1062 (1944).

For a discussion of amendments of pleadings, generally, see *Am. Jur. 2d, Pleading* §§ 693 to 697.

[FN2] *GTE Directories Pub. Corp. v. Trimen America, Inc.*, 67 F.3d 1563 (11th Cir. 1995).

[FN3] *Security Ins. Co. of Hartford v. Kevin Tucker & Associates, Inc.*, 64 F.3d 1001, 32 Fed. R. Serv.

3d 619, 1995 FED App. 0271P (6th Cir. 1995).

[FN4] § 23.

[FN5] *City of Aberdeen v. Rich*, 2001 SD 55, 625 N.W.2d 582 (S.D. 2001).

[FN6] *New York State Health Facilities Ass'n, Inc. v. Axelrod*, 229 A.D.2d 864, 646 N.Y.S.2d 412 (3d Dep't 1996).

[FN7] *West Virginia Fire & Cas. Co. v. Mathews*, 209 W. Va. 107, 543 S.E.2d 664 (2000).

[FN8] *Homestake Mining Co. v. South Dakota Subsequent Injury Fund*, 2002 SD 46, 644 N.W.2d 612 (S.D. 2002).

[FN9] *Paramount Pictures Corp. v. Replay TV*, 298 F. Supp. 2d 921 (C.D. Cal. 2004).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 225

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
F. Pleadings, in General

[Topic Summary Correlation Table References](#)

§ 226. Effect of deficiency in pleadings, generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  325

The courts may not make declarations concerning issues which are not raised in the pleadings,[1] nor may they grant relief which is not sought by the plaintiff.[2] In addition, it is improper for the court to consider facts that were not raised in any pleading filed in the action.[3]

In a federal court, however, a general prayer for "other and further relief as the court may deem to be just and proper" has been used as the basis for the court to grant relief which was not specifically requested by the parties.[4]

[FN1] *Westport Ins. Corp. v. Bayer*, 284 F.3d 489 (3d Cir. 2002); *Principal Health Care of Louisiana, Inc. v. Lower Agency, Inc.*, 38 F.3d 240 (5th Cir. 1994); *How v. Mars*, 245 Neb. 420, 513 N.W.2d 511 (1994).

[FN2] *Labatte v. Town of Culbertson*, 282 Mont. 342, 938 P.2d 611 (1997); *Gwinn v. Collier*, 247 Va. 479, 443 S.E.2d 161 (1994).

[FN3] *Whaley v. Franklin Cty. Bd. of Commrs.*, 92 Ohio St. 3d 574, 2001-Ohio-1287, 752 N.E.2d 267 (2001).

[FN4] *Fred Ahlert Music Corp. v. Warner/Chappell Music, Inc.*, 155 F.3d 17 (2d Cir. 1998).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 226

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
G. Dismissal Prior to Trial; Motions and Judgments Related Thereto

[Topic Summary Correlation Table](#)


Research References

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  [326](#) to [329](#), [361.1](#) to [363](#)

A.L.R. Library

A.L.R. Index, Declaratory Judgments or Relief

West's A.L.R. Digest, Declaratory Judgments  [326](#) to [329](#), [361.1](#) to [363](#)

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS IV G REF

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
G. Dismissal Prior to Trial; Motions and Judgments Related Thereto

[Topic Summary Correlation Table References](#)

§ 227. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 361.1 to 363

Forms

[Am. Jur. Pleading and Practice Forms, Federal Practice and Procedure § 1379](#) (Order—Dismissing action for declaratory relief—Pending proceeding in state court)

The courts are authorized to dismiss an action for declaratory judgment before a hearing.[1] Such a dismissal is within the court's discretion.[2] However, a court may not dismiss an action for declaratory judgment without either an oral or written explanation[3] or on the basis of a whim or personal disinclination.[4]

In deciding whether to dismiss a declaratory judgment action on the basis that the action lacks merit, the court must consider such factors as whether: (1) there is a pending state action in which all matters in controversy may be fully litigated; (2) the plaintiff filed suit in anticipation of the lawsuit filed by defendant; (3) the plaintiff engaged in forum shopping in bringing the suit; (4) possible inequities in allowing the declaratory plaintiff to gain precedence in time or to change forums exist; (5) the federal court is a convenient forum for the parties and the witnesses; (6) retaining the lawsuit in federal court would serve the purposes of judicial economy; and (7) the federal court is being called on to construe a state judicial decree involving the same parties and entered by the court before whom a parallel state suit between the same parties is pending.[5]

A party is entitled to file a notice of voluntary dismissal even if the opposing party had conducted a substantial amount of discovery and had obtained permission to submit an answer after completion of depositions where the opposing party had not yet filed an answer or a motion for a summary judgment.[6]

The courts have dismissed declaratory judgment actions on the basis that—

- the controversy was not justiciable and ripe.[7]
- a later-filed state court action will litigate the same issues.[8]
- the sole aim of the suit was to wrest the choice of forum from the opposing party.[9]

— the controversy was moot.[10]

[FN1] *Wilton v. Seven Falls Co.*, 515 U.S. 277, 115 S. Ct. 2137, 132 L. Ed. 2d 214 (1995); *DeNovellis v. Shalala*, 124 F.3d 298 (1st Cir. 1997); *Foundation for Interior Design Educ. Research v. Savannah College of Art & Design*, 244 F.3d 521, 152 Ed. Law Rep. 38, 2001 FED App. 0084P (6th Cir. 2001); *Northfield Ins. Co. v. Montana Ass'n of Counties*, 2000 MT 256, 301 Mont. 472, 10 P.3d 813 (2000).

[FN2] *Aetna Cas. & Sur. Co. v. Ind-Com Elec. Co.*, 139 F.3d 419 (4th Cir. 1998); *Orix Credit Alliance, Inc. v. Wolfe*, 212 F.3d 891 (5th Cir. 2000); *EMC Corp. v. Norand Corp.*, 89 F.3d 807 (Fed. Cir. 1996).

[FN3] *Odeco Oil and Gas Co., Drilling Div. v. Bonnette*, 4 F.3d 401 (5th Cir. 1993).

[FN4] *St. Paul Ins. Co. v. Trejo*, 39 F.3d 585 (5th Cir. 1994).

[FN5] *Vulcan Materials Co. v. City of Tehuacana*, 238 F.3d 382 (5th Cir. 2001).

[FN6] *U.S. Fidelity and Guar. Co. v. Rodgers*, 267 Mont. 178, 882 P.2d 1037 (1994).

[FN7] *Certain Underwriters at Lloyd's, London v. St. Joe Minerals Corp.*, 90 F.3d 671 (2d Cir. 1996).

[FN8] *Centennial Life Ins. Co. v. Poston*, 88 F.3d 255 (4th Cir. 1996); *Cornhill Ins. PLC v. Valsamis, Inc.*, 106 F.3d 80, 37 Fed. R. Serv. 3d 261 (5th Cir. 1997).

[FN9] *Allendale Mut. Ins. Co. v. Bull Data Systems, Inc.*, 10 F.3d 425 (7th Cir. 1993).

[FN10] *Nome Eskimo Community v. Babbitt*, 67 F.3d 813 (9th Cir. 1995).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 227

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
G. Dismissal Prior to Trial; Motions and Judgments Related Thereto

[Topic Summary Correlation Table References](#)

§ 228. Dismissal of complaint; motion to dismiss, generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  327.1

Forms

[Am. Jur. Pleading and Practice Forms, Declaratory Judgments §§ 40, 41](#) (Motion—To dismiss action—No basis for declaratory relief)

In considering a motion to dismiss, the only question is whether, on the basis of the allegations, a proper case is presented for invoking the jurisdiction of the court to make a declaratory judgment and not whether the plaintiff is entitled to a favorable declaration.[1]

A motion to dismiss is seldom an appropriate pleading in actions for declaratory judgments, and such motions will not be allowed simply because the plaintiff may not be able to prevail.[2] However, there is authority to the effect that on a motion to dismiss, the pertinent question is whether under the plaintiff's allegations, he or she is entitled to some relief.[3]

The mere dismissal of a complaint asking for a declaratory judgment is not an affirmative declaration of the parties' rights and is therefore improper.[4] On the other hand, it may be proper for a court to treat a defendant's motion to dismiss as a motion for a declaration in its favor[5] and if the defendant in an action for a declaratory judgment concedes the facts as alleged in the complaint not only constructively on a motion to dismiss but also, actually, the court may proceed to a determination of those rights, if that is the request of the defendant, and if the court concludes that the declaration of the stated facts does not warrant the declaration sought or the relief demanded in the complaint whether the disposition is by way of granting the motion to dismiss or judgment on the pleadings is not a matter of significance.[6]

Although no longer used in federal court, occasionally, a state court will still use demurrers, and in such jurisdictions, the use and determination of demurrers in declaratory judgment actions are controlled by the same principles that apply in other cases.[7]

The dismissal for improper venue has been held appropriate, on the defendant's motion to dismiss, in a de-

claratory judgment action in which the district court determined that the forum selection clauses in the governing contracts required arbitration in other districts; the court was not obligated to limit its consideration to the pleadings nor to convert the motion to one for a summary judgment.[8]

An order to show cause why the action should not be dismissed is a proper method by which the court, sua sponte, may raise and resolve the issue of whether it should exercise its discretionary jurisdiction in a declaratory judgment action.[9]

Observation:

Granting a motion to dismiss the complaint seeking a declaratory judgment as a remedy is not the functional equivalent of a declaratory judgment; where there is a legally recognized injury, like breach of contract, or where an important public policy is at issue which has been recognized by the state's supreme court as the functional equivalent of a legally recognized form of injury, the complainant is entitled to a declaration even if no monetary relief is available.[10]

[FN1] *Zeitlin v. Arnebergh*, 59 Cal. 2d 901, 31 Cal. Rptr. 800, 383 P.2d 152, 10 A.L.R.3d 707 (1963); *Wright v. Thompson*, 254 Iowa 342, 117 N.W.2d 520 (1962).

[FN2] *Christ by Christ v. Maryland Dept. of Natural Resources*, 335 Md. 427, 644 A.2d 34 (1994); *North Carolina Consumers Power, Inc. v. Duke Power Co.*, 285 N.C. 434, 206 S.E.2d 178 (1974).

[FN3] *City of Creve Coeur v. Creve Coeur Fire Protection Dist.*, 355 S.W.2d 857 (Mo. 1962).

[FN4] *Raffone v. Town of Islip*, 85 A.D.2d 597, 444 N.Y.S.2d 700 (2d Dep't 1981).

[FN5] *McKinsey & Co., Inc. v. Olympia & York 245 Park Ave. Co.*, 79 A.D.2d 557, 433 N.Y.S.2d 802 (1st Dep't 1980).

[FN6] *Garcia v. Motor Vehicle Acc. Indemnification Corp.*, 18 A.D.2d 62, 238 N.Y.S.2d 195, 7 A.L.R.3d 817 (1st Dep't 1963).

[FN7] *Logan v. Department of Correctional Services*, 254 Neb. 646, 578 N.W.2d 44 (1998).

[FN8] *Continental Cas. Co. v. American Nat. Ins. Co.*, 417 F.3d 727 (7th Cir. 2005).

[FN9] *Bituminous Cas. Corp. v. Combs Contracting Inc.*, 236 F. Supp. 2d 737 (E.D. Ky. 2002).

[FN10] *Sanders v. State Personnel Com'n*, 197 N.C. App. 314, 677 S.E.2d 182 (2009).

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
G. Dismissal Prior to Trial; Motions and Judgments Related Thereto

Topic Summary Correlation Table References

§ 229. Summary judgment

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  326 to 329

Forms

[Am. Jur. Pleading and Practice Forms, Federal Practice and Procedure § 1378](#) (Motion and notice—For summary judgment in declaratory judgment action—By plaintiff)

The general rule that a motion for summary judgment is proper if the pleadings and admissions show that there is no genuine issue of fact and that the moving party is entitled to a judgment as a matter of law^[1] has been applied in actions for declaratory judgment.^[2] Under some state statutes or rules of practice,^[3] and in federal courts,^[4] the courts will deny a motion for summary judgment where genuine issues of fact are raised.^[5]

[FN1] [Am. Jur. 2d, Summary Judgment § 1.](#)

[FN2] [Anderson v. Carlson, 171 Neb. 741, 107 N.W.2d 535, 83 A.L.R.2d 831 \(1961\).](#)

[FN3] [Sanders v. Wausau Underwriters Ins. Co., 392 So. 2d 343 \(Fla. 5th DCA 1981\); Anderson v. Carlson, 171 Neb. 741, 107 N.W.2d 535, 83 A.L.R.2d 831 \(1961\).](#)

[FN4] [Atlas Assur. Co. v. Standard Brick & Tile Corp., 264 F.2d 440 \(7th Cir. 1959\); Sit Jay Sing v. Nice, 182 F. Supp. 292 \(N.D. Cal. 1960\), judgment aff'd, 287 F.2d 561 \(9th Cir. 1961\).](#)

[FN5] [Hartford Acc. & Indem. Co. v. Northwest Nat. Bank of Chicago, 228 F.2d 391 \(7th Cir. 1955\); Kraus v. Dulles, 235 F.2d 840 \(D.C. Cir. 1956\).](#)

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
G. Dismissal Prior to Trial; Motions and Judgments Related Thereto

[Topic Summary Correlation Table References](#)

§ 230. Judgment on the pleadings

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  326 to 329

The general rule that a motion for judgment on the pleadings is an appropriate remedy where the pleading is fatally deficient in substance and where the moving party is clearly entitled to a judgment[1] has been applied in actions for declaratory relief.[2] Conversely, where a complaint is legally sufficient, setting forth facts and circumstances showing that declaratory adjudication is appropriate, it is improper to enter a judgment on the pleadings dismissing the action.[3]

[FN1] For a discussion of judgment on the pleadings as an appropriate remedy, see [Am. Jur. 2d, Pleading](#) §§ 546 to 556.

[FN2] [Lipson v. Bennett](#), 148 Conn. 385, 171 A.2d 83 (1961); [Iowa Mut. Ins. Co. v. Fred M. Simmons, Inc.](#), 258 N.C. 69, 128 S.E.2d 19 (1962); [Calhoun v. Supreme Court of Ohio](#), 61 Ohio App. 2d 1, 15 Ohio Op. 3d 13, 399 N.E.2d 559 (10th Dist. Franklin County 1978).

[FN3] [Sandler v. Casale](#), 125 Cal. App. 3d 707, 178 Cal. Rptr. 265 (4th Dist. 1981); [Sohio Petroleum Co. v. Miller](#), 229 La. 581, 86 So. 2d 201 (1956).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 230

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
G. Dismissal Prior to Trial; Motions and Judgments Related Thereto

[Topic Summary Correlation Table References](#)

§ 231. Failure to appear and answer; judgment by default

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 327.1

The failure of a defendant who has been duly served to appear and answer a complaint seeking a declaratory judgment constitutes an admission of every material fact pleaded which is essential to the judgment sought,[1] but the court must, nevertheless, proceed to construe such facts or instruments set out in the complaint and enter judgment thereon; the default caused by the defendant's failure to appear and answer does not entitle the plaintiff to a judgment based on the pleader's conclusions.[2] The default admits only the allegations of the complaint and does not extend either expressly or by implication the scope of the determination sought by the plaintiff or which could be granted by the court.[3] A default entered against one party in an action for declaratory judgment does not prohibit the court from declaring the rights and liabilities of the remaining parties in the action.[4]

[FN1] Prudential Ins. Co. of America v. Rader, 98 F. Supp. 44 (D. Minn. 1951); Hall v. Hartley, 146 W. Va. 328, 119 S.E.2d 759 (1961).

[FN2] St. Paul Mercury Ins. Co. v. Nationwide Mut. Ins. Co., 209 Va. 18, 161 S.E.2d 694 (1968); Hall v. Hartley, 146 W. Va. 328, 119 S.E.2d 759 (1961).

[FN3] Prudential Ins. Co. of America v. Rader, 98 F. Supp. 44 (D. Minn. 1951).

[FN4] Allstate Ins. Co. v. Johnson, 205 Mich. App. 495, 517 N.W.2d 799 (1994).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 231

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
H. Trial

[Topic Summary Correlation Table](#)

Research References


West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  [364](#) to [369](#)

A.L.R. Library

A.L.R. Index, Declaratory Judgments or Relief

A.L.R. Index, Jury and Jury Trial

West's A.L.R. Digest, Declaratory Judgments  [364](#) to [369](#)

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS IV H REF

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
H. Trial

[Topic Summary Correlation Table References](#)

§ 232. Right to jury trial in state courts

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 364 to 369

A.L.R. Library

[Right to jury trial in action for declaratory relief in state court, 33 A.L.R.4th 146](#)

Under the Uniform Declaratory Judgments Act, the courts generally recognize the right to a jury trial on those issues to which either party could have claimed a jury in any action for which the declaratory judgment action may be regarded as a substitute.[1] If a question is not one properly triable to a jury, such a question, when raised in a declaratory judgment action, does not give the plaintiff the right to a jury trial.[2] Where a claim is basically equitable or involves issues of fact traditionally within the province of an equity court, the parties are not entitled to a trial by jury.[3] Likewise, where the only issues in dispute involve the construction of a contract and determination of the rights and obligations of the parties to the contract, the parties are not entitled to a jury trial.[4]

Practice Tip:

In issuing a declaratory judgment, a trial judge in one state makes all findings of fact without a jury.[5]

[FN1] *Ex parte Rush*, 419 So. 2d 1388, 6 Ed. Law Rep. 1215, 33 A.L.R.4th 139 (Ala. 1982); *Iafelice ex rel. Wright v. Arpino*, 319 N.J. Super. 581, 726 A.2d 275 (App. Div. 1999).

[FN2] *Zurich Ins. Co. v. Northbrook Excess and Surplus Ins. Co.*, 145 Ill. App. 3d 175, 98 Ill. Dec. 512, 494 N.E.2d 634 (1st Dist. 1986), judgment *aff'd*, 118 Ill. 2d 23, 112 Ill. Dec. 684, 514 N.E.2d 150 (1987); *Insurance Co. of North America v. Anthony Amadei Sand & Gravel, Inc.*, 162 N.J. 168, 742 A.2d 550 (1999).

[FN3] *Brennan v. Superior Court*, 30 Cal. App. 4th 454, 35 Cal. Rptr. 2d 693 (3d Dist. 1994).

[FN4] *Zurich Ins. Co. v. Raymark Industries, Inc.*, 118 Ill. 2d 23, 112 Ill. Dec. 684, 514 N.E.2d 150 (1987).

[FN5] *Casco Indem. Co. v. O'Connor*, 755 A.2d 779 (R.I. 2000).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 232

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
H. Trial

[Topic Summary Correlation Table References](#)

§ 233. Right to jury trial in state courts—Jury trial for issues of fact

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 364 to 369

The mere fact that there is an issue of fact does not create the right to a jury trial.[1] On the other hand, if issues of fact would be triable to a jury as a matter of right in an ordinary civil action, that right cannot be destroyed by substituting a declaratory judgment action.[2] In some jurisdictions, the constitutional right to have issues of fact submitted to a jury is waived when there is no demand for a jury.[3]

Observation:

The function of a jury in proceedings under the Declaratory Judgment Act is to answer the questions of fact, or mixed law and fact, submitted to it by the court; to aid the court in its declaration of the rights of the parties; and not to render a verdict upon which a judgment is predicated.[4]

[FN1] *Berk v. Will County*, 34 Ill. 2d 588, 218 N.E.2d 98 (1966).

[FN2] *Olin's, Inc. v. Avis Rental Car System of Fla.*, 131 So. 2d 20 (Fla. 3d DCA 1961); *Pan Am. Petroleum Corp. v. Cities Service Gas Co.*, 191 Kan. 511, 382 P.2d 645 (1963).

[FN3] *Djomlija v. Urban*, 107 Ill. App. 3d 960, 63 Ill. Dec. 627, 438 N.E.2d 558 (1st Dist. 1982); *Sanitary and Improvement Dist. No. 32 of Sarpy County v. Continental Western Corp.*, 215 Neb. 843, 343 N.W.2d 314, 38 U.C.C. Rep. Serv. 516 (1983).

[FN4] *Fish v. Nationwide Mut. Ins. Co.*, 126 Vt. 487, 236 A.2d 648 (1967).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 233

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
H. Trial

[Topic Summary Correlation Table References](#)

§ 234. Right to jury trial in federal courts

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 364 to 369

Forms

[Am. Jur. Pleading and Practice Forms, Federal Practice and Procedure § 1376](#)

The equitable nature of a declaratory judgment action does not deprive a party of its right to a trial by jury.[1]

The right to a trial by jury in a declaratory judgment action may be demanded under the circumstances and in the manner provided in the Federal Rules of Civil Procedure.[2] If a jury trial is not timely requested, the right is deemed waived.[3] The parties to an action for a declaratory judgment are entitled to a jury trial as to all questions of fact raised in the action.[4]

The right to a jury trial in a declaratory judgment action depends on whether a claim is legal or equitable; if the plaintiff seeks purely equitable relief, there is no right to a trial by jury.[5] The inclusion of a claim for a declaration of rights in a complaint which seeks only equitable relief does not convert an equity case into an action at law, entitling the defendant to a jury trial.[6]

If a plaintiff seeks both declaratory relief and legal remedies, the legal claims must be presented to the jury prior to a resolution by the court of the equitable claims.[7] When the jury returns a verdict, the verdict is binding, and the court may not treat it as advisory.[8]

[FN1] *Esso Standard Oil Co. v. Zayas*, 352 F. Supp. 2d 165 (D.P.R. 2005), *aff'd*, 445 F.3d 13 (1st Cir. 2006).

[FN2] Fed. R. Civ. P. 57.

[FN3] *Landers Frary & Clark v. Vischer Products Co.*, 201 F.2d 319 (7th Cir. 1953).

[FN4] *Pacific Indem. Co. v. McDonald*, 107 F.2d 446, 131 A.L.R. 208 (C.C.A. 9th Cir. 1939); *U.S. Fidelity & Guar. Co. v. Nauer*, 1 F.R.D. 547 (D. Mass. 1941).

[FN5] *Simler v. Conner*, 372 U.S. 221, 83 S. Ct. 609, 9 L. Ed. 2d 691, 6 Fed. R. Serv. 2d 803 (1963); *Schaefer v. Gunzburg*, 246 F.2d 11 (9th Cir. 1957).

[FN6] *Robinson v. Brown*, 320 F.2d 503, 7 Fed. R. Serv. 2d 787 (6th Cir. 1963).

[FN7] *U.S. v. State of N.M.*, 642 F.2d 397 (10th Cir. 1981); *Nicely v. USX*, 709 F. Supp. 646 (W.D. Pa. 1989).

[FN8] *Dickinson v. General Acc. Fire & Life Assur. Corp.*, 147 F.2d 396 (C.C.A. 9th Cir. 1945).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 234

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
I. Proof; Evidence

[Topic Summary Correlation Table](#)

Research References


West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  [341.1](#) to [347](#)

A.L.R. Library

A.L.R. Index, Declaratory Judgment or Relief

A.L.R. Index, Presumptions and Burden of Proof

West's A.L.R. Digest, Declaratory Judgments  [341.1](#) to [347](#)

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS IV I REF

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
I. Proof; Evidence

[Topic Summary Correlation Table References](#)

§ 235. Generally; burden of proof

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 341.1 to 343

A.L.R. Library

[Burden of proof in actions under general declaratory judgment acts, 23 A.L.R.2d 1243](#)

The burden of proof in actions for a declaratory judgment is generally governed by the same rules as in other legal proceedings.[1] Thus, the burden is on the party claiming declaratory judgment jurisdiction to establish that such jurisdiction existed at the time the claim for declaratory relief was filed.[2] Likewise, the plaintiff has the burden of establishing the existence of an actual controversy,[3] as well as the burden of showing that it has actually been injured or that the threat of imminent injury exists.[4]

In a declaratory judgment action, the party asserting the affirmative of the controlling issues in the case bears the burden of proof[5] whether or not he or she is the nominal plaintiff in the action.[6] In other words, the burden is generally, with the exception of certain insurance cases,[7] on the plaintiff, who must prove all the allegations of his or her complaint by a preponderance of the evidence.[8] Thus, the burden is on the plaintiff taxpayer where he or she seeks a declaration that a tax is unconstitutional[9] or that a tax assessment in a case involving the qualification of a charitable or education organization for income tax exemption is invalid.[10] However, where a town's zoning regulation containing a three-acre minimum area requirement for residential lots in residential/agricultural zoning districts was not presumptively exclusionary, the burden was on the town to prove the reasonableness of the regulation in the landowner's declaratory judgment action.[11]

[FN1] *Owens v. Brownlie*, 610 N.W.2d 860 (Iowa 2000).

[FN2] *Powertech Technology Inc. v. Tessera, Inc.*, 660 F.3d 1301 (Fed. Cir. 2011).

[FN3] *Cardinal Chemical Co. v. Morton Intern., Inc.*, 508 U.S. 83, 113 S. Ct. 1967, 124 L. Ed. 2d 1 (1993); *West Interactive Corp. v. First Data Resources, Inc.*, 972 F.2d 1295 (Fed. Cir. 1992).

[FN4] State Dept. of Revenue and Taxation v. Pacificorp, 872 P.2d 1163 (Wyo. 1994).

[FN5] Markley v. Semle, 1998 ME 145, 713 A.2d 945 (Me. 1998); Harkins v. Crews, 907 S.W.2d 51 (Tex. App. San Antonio 1995), writ denied, (Mar. 7, 1996).

[FN6] S.D. Warren Co. v. Town of Standish, 1998 ME 66, 708 A.2d 1019 (Me. 1998).

[FN7] § 237.

[FN8] Tipp-It, Inc. v. Conboy, 257 Neb. 219, 596 N.W.2d 304 (1999); Vermont Mut. Ins. Co. v. Singleton By and Through Singleton, 316 S.C. 5, 446 S.E.2d 417 (1994).

[FN9] Mullendore v. Nuernberger, 230 Neb. 921, 434 N.W.2d 511, 51 Ed. Law Rep. 603 (1989).

[FN10] St. Matthew Pub., Inc. v. U.S., 41 Fed. Cl. 142 (1998).

[FN11] Johnson v. Town of Edgartown, 425 Mass. 117, 680 N.E.2d 37 (1997).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 235

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
I. Proof; Evidence

[Topic Summary Correlation Table References](#)

§ 236. Generally; burden of proof—Federal courts

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 341.1 to 343

Generally, the burden of proof in declaratory judgment actions mirrors that of ordinary actions at law or suits in equity.[1] The party seeking a declaratory judgment must submit evidence to prove that there is an actual controversy[2] and that the court has jurisdiction over the action[3] by a preponderance of the evidence.[4] The plaintiff seeking a declaratory judgment bears the risk of nonpersuasion regarding the elements of a plaintiff's prima facie case.[5]

The court will not construe a request for declaratory relief liberally or presume that the plaintiff wants the court to engage in fact-finding which was not requested in the pleadings.[6]

Although the plaintiff bears the burden of proof on the primary issue involved in the request for declaratory relief in the case, the defendant may have the burden of proof for other counts.[7]

[FN1] *Safeco Ins. Co. of America v. City of White House, Tenn.*, 191 F.3d 675, 1999 FED App. 0339P (6th Cir. 1999).

[FN2] *West Interactive Corp. v. First Data Resources, Inc.*, 972 F.2d 1295 (Fed. Cir. 1992); *Shell Oil Co. v. Amoco Corp.*, 970 F.2d 885 (Fed. Cir. 1992).

[FN3] *E.R. Squibb & Sons, Inc. v. Lloyd's & Companies*, 241 F.3d 154, 48 Fed. R. Serv. 3d 1249 (2d Cir. 2001); *Akro Corp. v. Luker*, 45 F.3d 1541 (Fed. Cir. 1995).

[FN4] *State of Tex. v. West Pub. Co.*, 882 F.2d 171 (5th Cir. 1989); *Cardtoons, L.C. v. Major League Baseball Players Ass'n*, 95 F.3d 959 (10th Cir. 1996).

[FN5] *In re Air Vectors Associates*, 53 B.R. 668 (Bankr. S.D. N.Y. 1985).

[FN6] *Step-Saver Data Systems, Inc. v. Wyse Technology*, 912 F.2d 643, 12 U.C.C. Rep. Serv. 2d 343

(3d Cir. 1990).

[FN7] *Anheuser-Busch, Inc. v. John Labatt Ltd.*, 89 F.3d 1339 (8th Cir. 1996); *United Sweetener USA, Inc. v. Nutrasweet Co.*, 760 F. Supp. 400 (D. Del. 1991).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 236

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
I. Proof; Evidence

[Topic Summary Correlation Table References](#)

§ 237. Insurance cases in state courts

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  344 to 347

The general rules dealing with the burden of proof in insurance cases^[1] have been applied to declaratory judgment cases. The burden is on the insured to prove the existence of a valid contract of insurance at the time of the incident.^[2]

The general rule which provides that the burden is on the insurer to prove a breach of warranty or representation has been applied in actions for declaratory judgments^[3] and so has the rule that the insurer has the burden of proving that particular risks fall within exceptions to or exclusions from the policy coverage.^[4]

In an action for a declaration of no coverage under an automobile liability policy, because of the alleged nonownership of the car by the insured, the insurer has the burden of proving that the agent's knowledge as to ownership is not binding on the company.^[5]

[FN1] Am. Jur. 2d, *Insurance* §§ 1961 to 1968.

[FN2] *First Nat. Bank v. Malady*, 242 Or. 353, 408 P.2d 724 (1965); *State Farm Mut. Auto. Ins. Co. v. American Cas. Co. of Reading, Pa.*, 150 W. Va. 435, 146 S.E.2d 842 (1966).

[FN3] *American Indem. Co. v. Newson*, 79 So. 2d 392 (La. Ct. App. 2d Cir. 1955).

[FN4] *Concord Ins. Co. v. Miles*, 118 N.J. Super. 551, 289 A.2d 267 (App. Div. 1972) (burden on the insurer that death was within prohibited or excepted risks); *Republic Cas. Co. v. Obregon*, 290 S.W.2d 267 (Tex. Civ. App. Waco 1956), writ refused n.r.e.

[FN5] *American Fidelity & Cas. Co. v. Backstrom*, 47 Wash. 2d 77, 287 P.2d 124 (1955).

AMJUR DECLJUDS § 237

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
I. Proof; Evidence

[Topic Summary Correlation Table References](#)

§ 238. Insurance cases in federal courts

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 344 to 347

In declaratory judgment actions brought by insurers in federal court, the position of the parties is often reversed insofar as the insurer is seeking a declaration of nonliability or noncoverage to defeat the insured's claims under the policy.[1] The view has been expressed that the burden of proof thus remains with the plaintiff insurer.[2]

According to another view, however, the burden of proof should not be mechanically placed on the doorstep of the plaintiff simply because it is the party seeking relief.[3] In these cases, the burden of proof is on the defendant insured who is the party seeking recovery under the policy.[4]

Observation:

The courts should be flexible in fixing the burden of proof in insurance cases. Which party should bear the burden rests largely on the condition of the pleadings and the character of the issues when the questions are presented. Factors to be considered in fixing the burden include: (1) whether the plaintiff objects to assuming the burden; (2) which party has asserted the affirmative of the issue; (3) which party would lose in the absence of evidence on the issue; and (4) what sort of relief is sought.[5]

[FN1] *Maryland Cas. Co. v. Baldwin*, 357 F.2d 338 (4th Cir. 1966); *Government Emp. Ins. Co. v. LeBleu*, 272 F. Supp. 421 (E.D. La. 1967).

[FN2] *Maryland Cas. Co. v. Baldwin*, 357 F.2d 338 (4th Cir. 1966); *State Farm Fire and Cas. Co. v. Nycum*, 943 F.2d 1100 (9th Cir. 1991).

[FN3] *Royal Indem. Co. v. Wingate*, 353 F. Supp. 1002 (D. Md. 1973), *aff'd*, 487 F.2d 1398 (4th Cir. 1973).

[FN4] *Penn America Ins. Co. v. Valade*, 28 Fed. Appx. 253 (4th Cir. 2002) (applying North Carolina

law); *Universal Underwriters Ins. Co. v. Stokes Chevrolet, Inc.*, 990 F.2d 598 (11th Cir. 1993) (applying Alabama law).

[FN5] *Fireman's Fund Ins. Co. v. Videfreeze Corp.*, 13 V.I. 382, 540 F.2d 1171 (3d Cir. 1976).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 238

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
I. Proof; Evidence

[Topic Summary Correlation Table References](#)

§ 239. Admissibility, weight, and sufficiency of evidence in federal courts

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 344 to 347

Generally, the federal courts have broad discretion concerning the admissibility, weight, and sufficiency of evidence in an action for declaratory judgment; thus, the court may determine if witnesses are credible.[1] The refusal to place a copy of the declaratory judgment complaint into evidence has been held a reversible error where the complaint was admissible to show evidence of liability under an insurance policy.[2] Evidence of the mental processes of an assessor cannot be adduced in a declaratory judgment action.[3]

[FN1] [J.S.K. Realty Co. v. New Plan Realty Trust](#), 9 Fed. Appx. 89 (4th Cir. 2001).

[FN2] [Harbor Ins. Co. v. Continental Bank Corp.](#), 922 F.2d 357, 20 Fed. R. Serv. 3d 526 (7th Cir. 1990).

[FN3] [Long Island Lighting Co. v. Town of Brookhaven](#), 889 F.2d 428 (2d Cir. 1989).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 239

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
J. Judgment and Enforcement Thereof

[Topic Summary Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  [381](#), [383](#), [390](#)

A.L.R. Library

A.L.R. Index, Declaratory Judgments or Relief

A.L.R. Index, Res Judicata

West's A.L.R. Digest, Declaratory Judgments  [381](#), [383](#), [390](#)

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS IV J REF

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
J. Judgment and Enforcement Thereof
1. In General

[Topic Summary Correlation Table References](#)

§ 240. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 381

A declaratory judgment is binding as to the parties' rights,[1] but it has no greater force than the issues it decides.[2] It is not appropriate to resolve a declaratory judgment in such a manner as would bind the parties in the underlying litigation on any issues therein.[3]

When a plaintiff seeks declaratory relief, neither the plaintiff's complaint nor the action for declaratory relief should be dismissed, but rather, the declaratory judgment should be issued denying relief.[4] The fact that the side which requested a declaratory judgment did not prevail in court does not render a written declaration of the parties' rights unnecessary.[5]

The view has also been expressed that there are occasions when it may be proper for a court to dismiss a declaratory judgment action and thus avoid the requirement that it declare the respective rights and obligations of the parties before it.[6]

A declaratory judgment must be accompanied with injunctive relief in the form of a mandatory injunction in order to successfully compel the government to act.[7]

[FN1] *Allstate Ins. Co. v. Chicago Ins. Co.*, 676 So. 2d 271 (Miss. 1996).

[FN2] *State ex rel. Shemo v. Mayfield Hts.*, 95 Ohio St. 3d 59, 2002-Ohio-1627, 765 N.E.2d 345 (2002), on reconsideration in part, 96 Ohio St. 3d 379, 2002-Ohio-4905, 775 N.E.2d 493 (2002); *National Operating, L.P. v. Mutual Life Ins. Co. of New York*, 2001 WI 87, 244 Wis. 2d 839, 630 N.W.2d 116, 45 U.C.C. Rep. Serv. 2d 250 (2001).

[FN3] *American Family Mut. Ins. Co. v. Savickas*, 193 Ill. 2d 378, 250 Ill. Dec. 682, 739 N.E.2d 445 (2000).

[FN4] *Bushey v. Northern Assur. Co. of America*, 362 Md. 626, 766 A.2d 598 (2001); *Depina v. Safety Ins. Co.*, 419 Mass. 135, 643 N.E.2d 430 (1994).

[FN5] *Forward v. McNeily*, 148 Md. App. 290, 811 A.2d 855 (2002).

[FN6] *Howard v. Montgomery Mut. Ins. Co.*, 145 Md. App. 549, 805 A.2d 1167 (2002).

[FN7] *State ex rel. Gen. Motors Corp. v. Indus. Comm.*, 117 Ohio St. 3d 480, 2008-Ohio-1593, 884 N.E.2d 1075 (2008).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 240

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
J. Judgment and Enforcement Thereof
1. In General

[Topic Summary Correlation Table References](#)

§ 241. Form of judgment

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 383

A federal court must enter an order for declaratory judgment as a separate document from its opinion,[1] and the order must clearly set out the court's reasoning for exercising discretionary jurisdiction in the action.[2] A declaratory judgment does not merely declare that one of the parties has obtained a summary judgment; it must also set out the rights of the parties.[3]

In some jurisdictions, declaratory judgment opinions must be in writing.[4] A state court of appeals may be required to reverse a lower court's decision where the lower court failed to file a written declaratory judgment.[5]] The court's declaratory judgment opinion should include a clear statement of the relief awarded and the rights declared.[6]

[FN1] *Marseilles Hydro Power, LLC v. Marseilles Land and Water Co.*, 299 F.3d 643, 53 Fed. R. Serv. 3d 218 (7th Cir. 2002); *Bates v. Johnson*, 901 F.2d 1424, 16 Fed. R. Serv. 3d 1225 (7th Cir. 1990).

[FN2] *United Nat. Ins. Co. v. R & D Latex Corp.*, 141 F.3d 916 (9th Cir. 1998), as amended, (May 14, 1998).

[FN3] *Health Cost Controls of Illinois, Inc. v. Washington*, 187 F.3d 703 (7th Cir. 1999).

[FN4] *Allstate Ins. Co. v. State Farm Mut. Auto. Ins. Co.*, 363 Md. 106, 767 A.2d 831 (2001).

[FN5] *Jackson v. Millstone*, 369 Md. 575, 801 A.2d 1034 (2002).

[FN6] *Gresser v. Anne Arundel County*, 349 Md. 542, 709 A.2d 740 (1998).

AMJUR DECLJUDS § 241

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
J. Judgment and Enforcement Thereof
2. Effect of Judgment; Res Judicata

[Topic Summary Correlation Table References](#)

§ 242. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 390

A.L.R. Library

[Extent to which principles of res judicata are applicable to judgments in actions for declaratory relief, 10 A.L.R.2d 782](#)

Under the Federal Declaratory Judgment Act,[1] and similar state laws, a declaratory judgment has the force and effect of a final judgment or decree.[2] Such a judgment is therefore res judicata of the matters at issue as between the parties and their privies[3] even where the judgment involved is a consent judgment[4] or a default judgment.[5] The parties cannot stipulate that the judgment to be entered upon their stipulation must not be res judicata.[6]

When a capital defendant files a declaratory judgment action challenging implementation of the death penalty, he or she must join all claims then available to him or her with regard to the implementation of his or her judgment because res judicata will apply full force to bar successive declaratory judgment actions.[7]

For matters not declared, a litigant who sought solely declaratory relief in the prior action may pursue other legal relief without claim preclusion operating as a bar; however, in circumstances where the prior claim for declaratory relief was accompanied by a request for an injunction or other coercive relief, traditional claim preclusion principles apply.[8]

[FN1] 28 U.S.C.A. § 2201.

[FN2] *Mears v. Town of Oxford, Md.*, 762 F.2d 368 (4th Cir. 1985); *Heimbouch v. Victorio Ins. Service, Inc.*, 220 Neb. 279, 369 N.W.2d 620 (1985).

[FN3] *In re SDDS, Inc.*, 97 F.3d 1030 (8th Cir. 1996); *Garrison ex rel. Chavis v. Barnes*, 117 N.C. App.

206, 450 S.E.2d 554 (1994).

[FN4] *Washington Tp. v. Gould*, 39 N.J. 527, 189 A.2d 697 (1963).

[FN5] *Lynch v. Lynch*, 250 Iowa 407, 94 N.W.2d 105 (1959).

[FN6] *Imperial Irr. Dist. v. Nevada-California Elec. Corp.*, 111 F.2d 319 (C.C.A. 9th Cir. 1940).

[FN7] *Bowling v. Kentucky Dept. of Corrections*, 301 S.W.3d 478 (Ky. 2009), as corrected, (Jan. 4, 2010).

[FN8] *Sebra v. Wentworth*, 2010 ME 21, 990 A.2d 538 (Me. 2010).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 242

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
J. Judgment and Enforcement Thereof
2. Effect of Judgment; Res Judicata

[Topic Summary Correlation Table References](#)

§ 243. Limitations on res judicata effect

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 390

A declaratory judgment is not res judicata as to matters improperly determined as where the merits of an assault claim were improperly adjudicated in an insurer's action to determine the issue of coverage.[1]

Only the parties to the action in which it is rendered are bound by such a judgment;[2] as to others, it is effective only as a precedent as to the matters declared by it.[3] Nor is a judgment binding where the court did not actually declare the rights of the parties but merely entered judgment for the defendants, finding, in effect, that the plaintiffs had failed to establish a right to declaratory judgment.[4]

Observation:

Claims asserted by an interstate natural gas company in a declaratory judgment action as to its rights and duties under a gas lease-sales agreement and lease assignments were not barred under principles of res judicata by a judgment against it in a prior federal court action where the federal court had specifically declined to accept pendent jurisdiction of those claims.[5]

CUMULATIVE SUPPLEMENT

Cases:

If a claimant seeks coercive relief, like an injunction, in addition to declaratory relief, then the claimant forfeits the ability to limit the preclusive effect of a declaratory judgment to issue preclusion. [Barrow v. D.A.N. Joint Venture Properties of North Carolina, LLC, 755 S.E.2d 641 \(N.C. Ct. App. 2014\).](#)

[END OF SUPPLEMENT]

[FN1] [Truchinski v. Cashman, 257 N.W.2d 286 \(Minn. 1977\).](#)

[FN2] *Davis v. National Indem. Co.*, 135 Ga. App. 793, 219 S.E.2d 32 (1975); *United Farm Bureau Mut. Ins. Co. v. Wampler*, 406 N.E.2d 1195 (Ind. Ct. App. 1980).

A declaratory judgment is in personam and generally has preclusive effect only on those who were joined or represented in the action. *Pajaro Valley Water Mgmt. Agency v. Amrhein*, 150 Cal. App. 4th 1364, 59 Cal. Rptr. 3d 484 (6th Dist. 2007).

[FN3] *Great Northern Ry. Co. v. Mustad*, 76 N.D. 84, 33 N.W.2d 436 (1948).

[FN4] *Pepin v. City of Danbury*, 171 Conn. 74, 368 A.2d 88 (1976).

[FN5] *El Paso Natural Gas Co. v. American Petrofina Co. of Texas*, 733 S.W.2d 541 (Tex. App. Houston 1st Dist. 1986), writ refused n.r.e., (July 8, 1987).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 243

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
J. Judgment and Enforcement Thereof
2. Effect of Judgment; Res Judicata

[Topic Summary Correlation Table References](#)

§ 244. Res judicata effect of declaratory judgment distinguished from effect of other judgments

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑390

Suits for declaratory judgments do not fall within the rule that a former judgment is conclusive not only of all matters actually adjudicated thereby but, in addition, also of all matters which could have been presented for adjudication.[1] A declaratory judgment is not res judicata as to matters not at issue and not passed upon.[2] Unlike other judgments, a declaratory judgment determines only what it actually decides and does not preclude, under res judicata principles, other claims that might have been advanced.[3] In other words, with respect to a previous declaratory judgment, res judicata precludes only claims that were actually decided.[4] A declaratory judgment is only a bar to matters which were actually litigated, not to those that might have been litigated.[5] Nor is it an absolute bar to subsequent proceedings where the parties are seeking other remedies even though based on claims that could have been asserted in the original action.[6] Where the plaintiff in the earlier declaratory judgment action sought only declaratory relief, the plaintiff may later be permitted to seek additional, coercive relief based on the same claim.[7] Thus, a declaration in federal court as to the rights and obligations of the parties is not res judicata of a subsequent action for damages, which may be sought as further relief.[8]

A plaintiff who brings an action for declaratory and coercive relief is barred from thereafter bringing an action for coercive relief based on the same claim. This rule prevents the plaintiff from splitting his or her claims. However, res judicata need not equally apply to the plaintiff and defendant. A defendant in an action for declaratory and coercive relief who succeeds in defeating the plaintiff's claim on a motion to dismiss is not barred by res judicata from subsequently litigating a claim for damages arising from the same cause of action which could have been litigated in the original proceeding. This result is based on the theory that a defendant ought not to be expected to initiate full-scale litigation in the forum selected by the plaintiff unless the plaintiff has proved that he or she has enough of a claim to warrant requiring the defendant to answer.[9] Likewise, a dismissal with prejudice of a declaratory judgment action seeking to declare a contract valid does not amount to a declaration that the contract is invalid and does not preclude an action for subsequent breaches of the contract.[10]

[FN1] *Cooke v. Gaidry*, 309 Ky. 727, 218 S.W.2d 960, 10 A.L.R.2d 778 (1949); *University of New*

Hampshire v. April, 115 N.H. 576, 347 A.2d 446 (1975).

[FN2] Renwick v. State, Bd. of Marine Pilots, 971 P.2d 631 (Alaska 1999); Ameigh v. Baycliffs Corp., 81 Ohio St. 3d 247, 1998-Ohio-467, 690 N.E.2d 872 (1998).

[FN3] State ex rel. Coles v. Granville, 116 Ohio St. 3d 231, 2007-Ohio-6057, 877 N.E.2d 968 (2007).

[FN4] State ex rel. Coles v. Granville, 116 Ohio St. 3d 231, 2007-Ohio-6057, 877 N.E.2d 968 (2007).

[FN5] Barbian v. Lindner Bros. Trucking Co., Inc., 106 Wis. 2d 291, 316 N.W.2d 371 (1982).

[FN6] Atchison v. City of Englewood, 180 Colo. 407, 506 P.2d 140 (1973).

[FN7] Mandarino v. Pollard, 718 F.2d 845 (7th Cir. 1983); University of New Hampshire v. April, 115 N.H. 576, 347 A.2d 446 (1975).

[FN8] Alexander & Alexander, Inc. v. Van Impe, 787 F.2d 163 (3d Cir. 1986); Security Mut. Cas. Co. v. Century Cas. Co., 621 F.2d 1062 (10th Cir. 1980).

[FN9] Horn & Hardart Co. v. National R.R. Passenger Corp., 659 F. Supp. 1258 (D.D.C. 1987), order aff'd, 843 F.2d 546 (D.C. Cir. 1988).

[FN10] Martin v. Martin, Martin & Richards, Inc., 989 S.W.2d 357 (Tex. 1998), petition for reh'g of writ of error/cause filed, (Oct. 26, 1998).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 244

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
J. Judgment and Enforcement Thereof
2. Effect of Judgment; Res Judicata

[Topic Summary Correlation Table References](#)

§ 245. Effect of state court judgment on actions in federal court

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  390

A declaratory judgment of a state court as regards the existence or nonexistence of the right of a citizen under a federal statute is not res judicata in an action in a federal court involving the same rights and is not binding on such court.[1]

On the other hand, the prior issuance of a declaratory judgment in state court will bar the same plaintiff from obtaining further relief in federal court,[2] including an action for damages based on the same claim for which the declaratory judgment was granted.[3]

[FN1] [Mandarino v. Pollard](#), 718 F.2d 845 (7th Cir. 1983).

[FN2] [Neale v. Goldberg](#), 525 F.2d 332 (9th Cir. 1975).

[FN3] [Cimasi v. City of Fenton, Mo.](#), 838 F.2d 298 (8th Cir. 1988) (applying Missouri law); [Tolbert v. Nelson County](#), 527 F. Supp. 836 (W.D. Va. 1981).

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
J. Judgment and Enforcement Thereof
2. Effect of Judgment; Res Judicata

[Topic Summary Correlation Table References](#)

§ 246. Class actions

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  390

In a class action, a declaratory judgment is conclusive upon all the members of the class virtually represented by the parties of record.^[1] As to persons not similarly situated as the parties of record, the judgment is a precedent as to matters declared by it.^[2]

[FN1] *Britt v. Trailmobile Co.*, 179 F.2d 569, 29 A.L.R.2d 1272 (6th Cir. 1950).

[FN2] *Anderson v. City of Park Ridge*, 396 Ill. 235, 72 N.E.2d 210 (1947); *Great Northern Ry. Co. v. Mustad*, 76 N.D. 84, 33 N.W.2d 436 (1948).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 246

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
K. Appeal and Review

[Topic Summary Correlation Table](#)

Research References


West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  [392.1](#) to [395](#)

A.L.R. Library

A.L.R. Index, Appeal and Error

A.L.R. Index, Declaratory Judgments or Relief

West's A.L.R. Digest, Declaratory Judgments  [392.1](#) to [395](#)

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS IV K REF

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
K. Appeal and Review

[Topic Summary Correlation Table References](#)

§ 247. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 392.1 to 395

Any declaration by a federal court of the rights and other legal relations of an interested party will have the force and effect of a final judgment or decree and will be reviewable as such.[1] With regard to the requirements for appeal and review, declaratory judgments are generally like other judgments,[2] including the requirement of finality.[3] A declaratory judgment is deemed final for appeal purposes although it does not specify relief.[4] A judgment that declares rights but does not order relief is appealable as, and only as, a declaratory judgment.[5] The stay of a declaratory judgment action is immediately appealable.[6] Also, a district court's discretionary remand pursuant to the Declaratory Judgment Act constitutes an immediately appealable "final decision" under the collateral order doctrine.[7]

In federal court, a ruling in a declaratory judgment is not necessarily immediately appealable.[8] If the plaintiffs are granted the only relief they sought, a declaratory judgment, the judgment is final and subject to appeal.[9] However, an appeal is not permissible when there is a pending motion to alter or amend the order.[10] Some "loose ends" in the underlying controversy which would negate finality for the purposes of an appeal in most civil actions do not have that effect for an appeal of a declaratory judgment.[11]

While the view has been expressed that a declaratory judgment which leaves unresolved the request for an injunction, damages, and attorney's fees is not a final, appealable order,[12] there is also authority holding that a declaratory judgment action is final for the purposes of an appeal even if it fails to establish the legal rights with precision or does not include a final determination of damages.[13]

A district court's dismissal of a declaratory judgment complaint without prejudice is deemed not a final appealable order where the dismissal order contemplated that the plaintiff would reassert the claims in the future if the record became concrete enough to supply the requisite standing and ripeness.[14] Also, an interlocutory order, in a declaratory judgment action, determining that an insurer had the duty to defend the underlying tort action, but finding that the duty to indemnify could not be determined until the conclusion of the tort action, is not appealable under the collateral order doctrine as the issue was not effectively unreviewable on appeal from the final judgment.[15]

Observation:

Appellate courts consider five factors when reviewing a district court's exercise of jurisdiction under the Declaratory Judgment Act: (1) the existence of a state court proceeding involving the same issues and parties, (2) the likelihood that the declaration will resolve the uncertainty of the obligation which gave rise to the controversy, (3) the convenience of the parties, (4) the public interest in a settlement of the uncertainty of obligation, and (5) the availability and relative convenience of other remedies.[16]

The federal court does not have jurisdiction over an appeal when the issues involved are rendered moot prior to the completion of the appeal.[17] The question of mootness has been deemed jurisdictional and thus can be raised by a federal appellate court sua sponte on appeal from a grant of declaratory judgment in a dispute between a surety on performance and payment bonds for a city construction project, the city, and the construction contractor regardless of whether the district court considered it or the parties briefed the issue, and the question of mootness was reviewed de novo.[18]

A party may appeal the dismissal of a declaratory judgment action,[19] and a decision by the federal court as to whether an actual controversy exists is subject to appellate review.[20]

In state court also, a declaratory judgment may be treated as a final order for the purposes of appeal.[21] If the plaintiffs are granted only the relief they sought, a declaratory judgment is final and subject to appeal.[22] When the court order dismisses all claims against all the parties, the order is final.[23] However, a declaratory judgment does not automatically become final and appealable if some relief remains to be granted or if a significant factual issue remains pending below.[24] If the issue of damages has not been decided, the declaratory judgment is not a final order.[25] Likewise, if the court has not finally determined all the issues raised by the plaintiff, the order is not final.[26] When a declaratory judgment order is interlocutory in nature, the order is not subject to appeal.[27]

A state court has held that an order granting an injunction and making a declaration may be an appealable order even though a court has not made a final ruling on a motion for attorney's fees.[28]

A summary judgment granted pursuant to the Uniform Declaratory Judgments Act, particularly one that turns upon a question of law, should be reviewed as any other summary judgment.[29]

The failure of a circuit court to enter a proper declaratory judgment, in a declaratory judgment action, is not a jurisdictional defect, and an appellate court, in its discretion, may review the merits of the controversy and remand for entry of an appropriate declaratory judgment by the circuit court.[30]

[FN1] 28 U.S.C.A. § 2201(a); 28 U.S.C.A. § 1291.

[FN2] *Peterson v. Lindner*, 765 F.2d 698, 2 Fed. R. Serv. 3d 992 (7th Cir. 1985).

[FN3] *Abbs v. Sullivan*, 963 F.2d 918, 75 Ed. Law Rep. 162, 23 Fed. R. Serv. 3d 8 (7th Cir. 1992); *Peterson v. Lindner*, 765 F.2d 698, 2 Fed. R. Serv. 3d 992 (7th Cir. 1985).

[FN4] *Wachovia Bank, N.A. v. Foster Bancshares, Inc.*, 457 F.3d 619, 60 U.C.C. Rep. Serv. 2d 1126 (7th Cir. 2006).

[FN5] Wachovia Bank, N.A. v. Foster Bancshares, Inc., 457 F.3d 619, 60 U.C.C. Rep. Serv. 2d 1126 (7th Cir. 2006).

[FN6] Medical Assur. Co., Inc. v. Hellman, 610 F.3d 371 (7th Cir. 2010).

[FN7] Countrywide Home Loans, Inc., v. Mortgage Guar. Ins. Corp., 642 F.3d 849 (9th Cir. 2011).

[FN8] Henglein v. Colt Industries Operating Corp., 260 F.3d 201 (3d Cir. 2001).

[FN9] National Union Fire Ins. Co. of Pittsburgh, Pa. v. City Sav., F.S.B., 28 F.3d 376, 29 Fed. R. Serv. 3d 550 (3d Cir. 1994), as amended, (Aug. 29, 1994); Curtis-Universal, Inc. v. Sheboygan Emergency Medical Services, Inc., 43 F.3d 1119 (7th Cir. 1994).

[FN10] Terra Nova Ins. Co. Ltd. v. 900 Bar, Inc., 887 F.2d 1213, 15 Fed. R. Serv. 3d 347 (3d Cir. 1989).

[FN11] Henglein v. Colt Industries Operating Corp., 260 F.3d 201 (3d Cir. 2001); GNB Battery Technologies, Inc. v. Gould, Inc., 65 F.3d 615 (7th Cir. 1995).

[FN12] GeoSouthern Energy Corp. v. Chesapeake Operating, Inc., 241 F.3d 388, 48 Fed. R. Serv. 3d 788 (5th Cir. 2001); Peterson v. Lindner, 765 F.2d 698, 2 Fed. R. Serv. 3d 992 (7th Cir. 1985).

[FN13] Tafoya v. Western Conference of Teamsters Pension Trust Fund, 909 F.2d 344 (9th Cir. 1990).

[FN14] PSA, LLC v. Gonzales, 271 Fed. Appx. 218 (3d Cir. 2008).

[FN15] Penn-America Ins. Co. v. Mapp, 521 F.3d 290 (4th Cir. 2008).

[FN16] National R.R. Passenger Corp. v. Pennsylvania Public Utility Com'n, 342 F.3d 242 (3d Cir. 2003).

[FN17] Van Bergen v. State of Minn., 59 F.3d 1541 (8th Cir. 1995); Continental Cas. Co. v. Fibreboard Corp., 4 F.3d 777 (9th Cir. 1993).

[FN18] Hartford Cas. Ins. Co. v. Intrastate Const. Corp., 501 Fed. Appx. 929 (11th Cir. 2012).

[FN19] Nautilus Ins. Co. v. Winchester Homes, Inc., 15 F.3d 371 (4th Cir. 1994); National Presto Industries, Inc. v. Dazey Corp., 107 F.3d 1576 (Fed. Cir. 1997).

[FN20] Amana Refrigeration, Inc. v. Quadlux, Inc., 172 F.3d 852 (Fed. Cir. 1999).

[FN21] Canal Ins. Co. v. Reed, 666 So. 2d 888 (Fla. 1996).

[FN22] Vanderpool v. Fidelity & Cas. Ins. Co., 322 Ark. 308, 908 S.W.2d 653 (1995).

[FN23] Polakoff v. Hampton, 148 Md. App. 13, 810 A.2d 1029 (2002).

[FN24] Moore v. Central Maine Power Co., 673 A.2d 699 (Me. 1996); Jenkins v. Jenkins, 112 Md. App. 390, 685 A.2d 817 (1996).

[FN25] *Huber v. Nationwide Mut. Ins. Co.*, 347 Md. 415, 701 A.2d 415 (1997); *Valley Imp. Ass'n v. Hartford Acc. and Indem. Co.*, 1993-NMSC-061, 116 N.M. 426, 863 P.2d 1047 (1993).

[FN26] *Porter Hayden Co. v. Commercial Union Ins. Co.*, 339 Md. 150, 661 A.2d 691 (1995).

[FN27] *Powder River County v. State*, 2002 MT 259, 312 Mont. 198, 60 P.3d 357 (2002).

[FN28] *Christenot v. State, Dept. of Commerce*, 272 Mont. 396, 901 P.2d 545 (1995).

[FN29] *Olson v. Town of Cottage Grove*, 2008 WI 51, 309 Wis. 2d 365, 749 N.W.2d 211 (2008).

[FN30] *Lovell Land, Inc. v. State Highway Admin.*, 408 Md. 242, 969 A.2d 284 (2009).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 247

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
K. Appeal and Review

[Topic Summary Correlation Table References](#)

§ 248. Adequate record for review

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 392.1 to 395

In federal court, appellate review is proper only on an adequate and full-bodied record.[1] If the record is not adequate, the court of appeals may decline to exercise jurisdiction over the appeal,[2] or it may remand the case so that the district court can record its reasoning[3] or to resolve an ambiguity.[4] In some cases, however, the absence of findings of fact and conclusions of law does not necessarily require a reversal if a full understanding of the issues on appeal could be determined by the appellate court.[5] Moreover, a declaratory judgment need not itemize each issue which is resolved in an order since a general statement that all issues are resolved is sufficient.[6]

Observation:

The court of appeals will not presume that a declaratory judgment rested on an inadequate record without some suggestion by the appellants as to how a more fully developed record would have compelled a different result.[7]

Likewise, state appellate courts require a sufficiently precise and undisputed factual record for review,[8] which has been prepared in accordance with the court rules.[9] When a party fails to submit a properly prepared record, the court may provide an opportunity to cure the deficiencies.[10] The court is not required, however, to grant unlimited extensions of time for a party to provide the proper pleadings to the court.[11] A court may refuse to grant relief in a case where the record is insufficient,[12] or it may remand the case when the record presents an insufficient basis for the court to address the issue at hand.[13]

[FN1] *In re Joint Eastern and Southern Dist. Asbestos Litigation*, 993 F.2d 313 (2d Cir. 1993).

[FN2] *Alpine State Bank v. Ohio Cas. Ins. Co.*, 941 F.2d 554, 21 Fed. R. Serv. 3d 611 (7th Cir. 1991); *Foremost Sales Promotions, Inc. v. Director, Bureau of Alcohol, Tobacco and Firearms*, 812 F.2d 1044, 6 Fed. R. Serv. 3d 1376 (7th Cir. 1987).

[FN3] *Government Employees Ins. Co. v. Dizol*, 133 F.3d 1220 (9th Cir. 1998); *Jackson v. Culinary School of Washington, Ltd.*, 59 F.3d 254, 101 Ed. Law Rep. 599 (D.C. Cir. 1995).

[FN4] *Foster v. Hallco Mfg. Co., Inc.*, 947 F.2d 469 (Fed. Cir. 1991).

[FN5] *Richter, S.A. v. Bank of America Nat. Trust and Sav. Ass'n*, 939 F.2d 1176, 16 U.C.C. Rep. Serv. 2d 681 (5th Cir. 1991).

[FN6] *Cincinnati Ins. Co. v. Star Financial Bank*, 35 F.3d 1186 (7th Cir. 1994).

[FN7] *Nautilus Ins. Co. v. 8160 South Memorial Drive, LLC*, 436 F.3d 1197 (10th Cir. 2006).

[FN8] *Adkins v. Merow*, 202 W. Va. 492, 505 S.E.2d 406 (1997).

[FN9] *Coates v. First Mid-American Finance Co., L.L.C.*, 263 Neb. 619, 641 N.W.2d 398 (2002).

[FN10] *Nichols v. Arnold*, 347 Ark. 758, 66 S.W.3d 652 (2002).

[FN11] *Etherly v. Eddy*, 346 Ark. 87, 57 S.W.3d 116 (2001).

[FN12] *Ex parte American Resources Ins. Co., Inc.*, 663 So. 2d 932 (Ala. 1995).

[FN13] *Seymour v. Region One Bd. of Educ.*, 261 Conn. 475, 803 A.2d 318, 168 Ed. Law Rep. 368 (2002).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 248

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
K. Appeal and Review

[Topic Summary Correlation Table References](#)

§ 249. Standard of review in federal courts

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 393

A district court's exercise of discretion under the Federal Declaratory Judgment Act^[1] is reviewed for an abuse of discretion,^[2] and reversal is appropriate only when the court of appeals is left with a definite and firm conviction that the court below committed a clear error of judgment in the conclusion it reached, improperly applied the law, or used an erroneous legal standard.^[3]

The court of appeals reviews for an abuse of discretion a district court's decision to exercise jurisdiction over a declaratory judgment action in which there are parallel state-court proceedings, giving great deference to its analysis and conclusions.^[4] The trial courts have discretion to entertain a declaratory judgment case, even if the case otherwise satisfies subject matter jurisdiction, and the appellate court should not interfere where the same parties and the same state issues are pending in a state court.^[5]

The court of appeals reviews a district court's decision to stay or dismiss declaratory judgment claims for abuse of discretion.^[6] The decision to stay or dismiss a declaratory action is reviewed for an abuse of discretion, which occurs when: (1) the court's decision was clearly unreasonable, arbitrary, or fanciful; (2) the decision was based on an erroneous conclusion of law; (3) the court's findings were clearly erroneous; or (4) the record contains no evidence upon which the court rationally could have based its decision.^[7]

According to the United States Supreme Court, when reviewing a court's exercise of discretion under the Declaratory Judgment Act, the courts of appeal should not review a decision to grant or refrain from granting a declaratory judgment de novo; rather, the appellate court should apply the abuse of discretion standard.^[8]

The court of appeals reviews discretionary decisions about the propriety of hearing declaratory judgment actions for abuse of discretion,^[9] but if the district court does not provide reasoning for its discretionary decision regarding whether to exercise jurisdiction, the court of appeals must remand the case to allow the district court to properly exercise its discretion.^[10]

A district court's refusal to award damages under the Federal Declaratory Judgment Act's "further relief" section is reviewed for abuse of discretion.^[11]

[FN1] 28 U.S.C.A. § 2201(a).

[FN2] *The New York Times Co. v. Gonzales*, 459 F.3d 160 (2d Cir. 2006); *Adrian Energy Associates v. Michigan Public Service Com'n*, 481 F.3d 414, 2007 FED App. 0080P (6th Cir. 2007); *New Wellington Financial Corp. v. Flagship Resort Development Corp.*, 416 F.3d 290 (4th Cir. 2005); *Severe Records, LLC v. Rich*, 658 F.3d 571 (6th Cir. 2011); *Allstate Ins. Co. v. Herron*, 634 F.3d 1101 (9th Cir. 2011); *Manuel v. Convergys Corp.*, 430 F.3d 1132 (11th Cir. 2005); *Sony Electronics, Inc. v. Guardian Media Technologies, Ltd.*, 497 F.3d 1271 (Fed. Cir. 2007).

[FN3] *Severe Records, LLC v. Rich*, 658 F.3d 571 (6th Cir. 2011).

[FN4] *Medical Liability Mut. Ins. Co. v. Alan Curtis LLC*, 519 F.3d 466 (8th Cir. 2008).

[FN5] *Brillhart v. Excess Ins. Co. of America*, 316 U.S. 491, 62 S. Ct. 1173, 86 L. Ed. 1620 (1942).

[FN6] *Sherwin-Williams Co. v. Holmes County*, 343 F.3d 383, 180 Ed. Law Rep. 501 (5th Cir. 2003); *Medical Assur. Co., Inc. v. Hellman*, 610 F.3d 371 (7th Cir. 2010); *Scottsdale Ins. Co. v. Detco Industries, Inc.*, 426 F.3d 994 (8th Cir. 2005); *Ameritas Variable Life Ins. Co. v. Roach*, 411 F.3d 1328 (11th Cir. 2005); *Capo, Inc. v. Dioptrics Medical Products, Inc.*, 387 F.3d 1352 (Fed. Cir. 2004).

[FN7] *Electronics for Imaging, Inc. v. Coyle*, 394 F.3d 1341 (Fed. Cir. 2005).

[FN8] *Wilton v. Seven Falls Co.*, 515 U.S. 277, 115 S. Ct. 2137, 132 L. Ed. 2d 214 (1995).

[FN9] *Rhoades v. Avon Products, Inc.*, 504 F.3d 1151, 69 Fed. R. Serv. 3d 358 (9th Cir. 2007).

[FN10] *Principal Life Ins. Co. v. Robinson*, 394 F.3d 665 (9th Cir. 2005).

[FN11] *United Teacher Associates Ins. Co. v. Union Labor Life Ins. Co.*, 414 F.3d 558 (5th Cir. 2005); *Strawberry Water Users Ass'n v. U.S.*, 576 F.3d 1133 (10th Cir. 2009).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 249

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
K. Appeal and Review

[Topic Summary Correlation Table References](#)

§ 250. Standard of review in federal courts—De novo

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 393

Although a district court's decision to decline to consider a declaratory judgment action is reviewed for abuse of discretion, once the district court accepts jurisdiction, legal determinations must be reviewed de novo.[1] To the extent that a trial court determined questions of law in interpreting a statute, the appellate court exercises a de novo review.[2] Indeed, a district court's legal conclusions in a declaratory judgment action are subject to a de novo review.[3] Whether an "actual controversy" exists which is sufficient to sustain federal jurisdiction under the Federal Declaratory Judgment Act is a question of law that is reviewed de novo[4] or is a question of law that is subject to a plenary appellate review.[5] Plenary review also applies to a district court's order dismissing as moot an insured's action against a liability insurer for a declaratory judgment that asbestos-related claims by the insured arose from separate, rather than single, occurrences.[6] Also, a de novo review would apply to a challenge to a district court's determination that a declaratory judgment suit, on the basis of essentially undisputed facts, presented no constitutionally cognizable controversy where the district court never had occasion to reach the discretionary jurisdictional question under the Federal Declaratory Judgment Act.[7]

The court of appeals conducts a de novo review of the issue of whether a district court possessed jurisdiction in a declaratory judgment proceeding.[8] More specifically, under the Federal Declaratory Judgment Act, the court of appeals reviews the exercise of discretion to entertain insurance coverage diversity cases de novo.[9] The court of appeals reviews de novo the question of ripeness and subject matter jurisdiction in an action brought pursuant to the Federal Declaratory Judgment Act.[10] A district court's dismissal of a declaratory judgment action for lack of jurisdiction presents a question of law that is subject to de novo review.[11] The court of appeals reviews de novo a district court's decision to grant a motion for declaratory judgment,[12] or a district court's grant of summary judgment in a declaratory judgment cause of action,[13] or a district court's denial of declaratory relief.[14] Simply stated, declaratory judgments are reviewed de novo.[15]

Observation:

The court of appeals would not consider an argument raised for the first time on appeal from the entry of the declaratory judgment.[16]

-
- [FN1] *Garanti Finansal Kiralama A.S. v. Aqua Marine and Trading Inc.*, 697 F.3d 59 (2d Cir. 2012).
- [FN2] *Rural Water Dist. No. 1, Ellsworth County, Kansas v. City of Wilson, Kansas*, 243 F.3d 1263 (10th Cir. 2001).
- [FN3] *D.A.B.E., Inc. v. City of Toledo*, 393 F.3d 692, 2005 FED App. 0004P (6th Cir. 2005).
- [FN4] *Dey Pharma, LP v. Sunovion Pharmaceuticals Inc.*, 677 F.3d 1158 (Fed. Cir. 2012).
- [FN5] *Matthews Intern. Corp. v. Biosafe Engineering, LLC*, 695 F.3d 1322 (Fed. Cir. 2012).
- [FN6] *Acands, Inc. v. Travelers Cas. and Sur. Co.*, 435 F.3d 252 (3d Cir. 2006).
- [FN7] *Surefoot LC v. Sure Foot Corp.*, 531 F.3d 1236 (10th Cir. 2008).
- [FN8] *Volvo Const. Equipment North America, Inc. v. CLM Equipment Company, Inc.*, 386 F.3d 581 (4th Cir. 2004).
- [FN9] *Omaha Property and Cas. Ins. Co. v. Johnson*, 923 F.2d 446 (6th Cir. 1991).
- [FN10] *Principal Life Ins. Co. v. Robinson*, 394 F.3d 665 (9th Cir. 2005).
- [FN11] *Caraco Pharmaceutical Laboratories, Ltd. v. Forest Laboratories, Inc.*, 527 F.3d 1278 (Fed. Cir. 2008).
- [FN12] *DaimlerChrysler Corp. v. Cox*, 447 F.3d 967, 2006 FED App. 0175P (6th Cir. 2006); *Evanston Ins. Co. v. Johns*, 530 F.3d 710 (8th Cir. 2008).
- [FN13] *Stryker Corp. v. National Union Fire Ins. Co. of Pittsburgh, PA*, 681 F.3d 819 (6th Cir. 2012).
- [FN14] *Powell's Books, Inc. v. Kroger*, 622 F.3d 1202 (9th Cir. 2010).
- [FN15] *Vanliner Ins. Co. v. Sampat*, 320 F.3d 709 (7th Cir. 2003); *Nevada Dept. of Corrections v. Greene*, 648 F.3d 1014 (9th Cir. 2011), cert. denied, 132 S. Ct. 1823, 182 L. Ed. 2d 627 (2012) (a decision to grant or deny declaratory relief is reviewed de novo).
- [FN16] *Nautilus Ins. Co. v. 8160 South Memorial Drive, LLC*, 436 F.3d 1197 (10th Cir. 2006).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 250

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
K. Appeal and Review

[Topic Summary Correlation Table References](#)

§ 251. Standard of review in state courts

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 393, 394

Generally, the state courts follow the federal courts in holding that the standard of review for a decision to grant or deny declaratory relief is for abuse of discretion.[1] Indeed, a trial court's decision to entertain an action for declaratory relief is reviewable for abuse of discretion,[2] and in reviewing a declaratory judgment, the supreme court is limited to determining whether the trial court committed a clear abuse of discretion or an error of law.[3]

However, with respect to an appeal of a declaratory judgment order, an appellate court may review the judgment de novo.[4] A court's determination of questions of law may be reviewed de novo.[5] The appellate court reviews de novo the trial justice's determinations of questions of law when sitting without a jury in a declaratory judgment action.[6] An order in a declaratory judgment action is generally accorded a presumption of correctness on appellate review; however, to the extent that the decision rests on a question of law, the order is subject to full, or de novo, review on appeal.[7]

When a trial court enters a declaratory judgment after a bench trial, an appellate court applies a sufficiency of the evidence review to the trial court's factual findings and reviews its conclusions of law de novo.[8] With respect to questions of fact, the reviewing court is not free to substitute its own findings for those of the trial court[9] unless they are clearly erroneous[10] or without evidence to support them.[11]

The appellate court will not disturb a trial court's dismissal of a petition for declaratory judgment unless its decision is an unsustainable exercise of discretion or is unsupported by the evidence or legally erroneous.[12]

[FN1] *Brause v. State, Dept. of Health & Social Services*, 21 P.3d 357 (Alaska 2001); *Northfield Ins. Co. v. Montana Ass'n of Counties*, 2000 MT 256, 301 Mont. 472, 10 P.3d 813 (2000); *McGrath v. Town of Canaan*, 147 N.H. 623, 795 A.2d 828 (2002); *Eargle v. Horry County*, 344 S.C. 449, 545 S.E.2d 276 (2001); *Putnam v. Time Warner Cable of Southeastern Wisconsin, Ltd. Partnership*, 2002 WI 108, 255 Wis. 2d 447, 649 N.W.2d 626 (2002).

[FN2] Meyer v. Sprint Spectrum L.P., 45 Cal. 4th 634, 88 Cal. Rptr. 3d 859, 200 P.3d 295 (2009).

[FN3] Vanderhoff v. Harleysville Ins. Co., 606 Pa. 272, 997 A.2d 328 (2010).

[FN4] Fraternal Order of Eagles No. 2421 of Vermillion v. Hasse, 2000 SD 139, 618 N.W.2d 735 (S.D. 2000); Painter v. Coleman, 211 W. Va. 451, 566 S.E.2d 588 (2002).

[FN5] United Fire and Cas. Co. v. Iowa Dist. Court for Sioux County, 612 N.W.2d 101 (Iowa 2000); Quick Safe-T Hitch, Inc. v. RSB Systems L.C., 2000 UT 84, 12 P.3d 577 (Utah 2000); Olson v. Town of Cottage Grove, 2008 WI 51, 309 Wis. 2d 365, 749 N.W.2d 211 (2008).

[FN6] Foster Gloucester Regional School Bldg. Committee v. Sette, 996 A.2d 1120, 258 Ed. Law Rep. 304 (R.I. 2010).

[FN7] Reform Party of Florida v. Black, 885 So. 2d 303 (Fla. 2004).

[FN8] Van Dam v. Lewis, 307 S.W.3d 336 (Tex. App. San Antonio 2009).

[FN9] Walsh v. Nelson, 658 N.W.2d 113 (Iowa 2002); Harkins v. Greenville County, 340 S.C. 606, 533 S.E.2d 886 (2000).

[FN10] Miller v. City of Omaha, 260 Neb. 507, 618 N.W.2d 628 (2000); Farmers and Mechanics Mut. Ins. Co. of West Virginia v. Cook, 210 W. Va. 394, 557 S.E.2d 801 (2001).

[FN11] Harkins v. Greenville County, 340 S.C. 606, 533 S.E.2d 886 (2000).

[FN12] Forsberg v. Kearsarge Regional School Dist., 160 N.H. 264, 999 A.2d 278, 258 Ed. Law Rep. 1127 (2010).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 251

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
L. Scope and Types of Relief in Declaratory Judgment Proceedings; Postjudgment Relief

[Topic Summary Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 384 to 391

A.L.R. Library

A.L.R. Index, Declaratory Judgments or Relief

A.L.R. Index, Injunctions

A.L.R. Index, Stay of Action or Proceeding

West's A.L.R. Digest, Declaratory Judgments 🔑 384 to 391

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS IV L REF

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
L. Scope and Types of Relief in Declaratory Judgment Proceedings; Postjudgment Relief
1. Relief Under State Statutes
a. Consequential and Incidental Relief

[Topic Summary Correlation Table References](#)

§ 252. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 384, 390

Declaratory relief is a broad remedy,[1] and a court, in granting declaratory relief, has the power to award additional relief.[2] The court has considerable discretion to frame a remedy within the declaratory judgment action as long as that remedy is commensurate with the scope of the underlying action.[3]

A court, in a proceeding for declaratory relief, may enter a judgment granting both declaratory and coercive relief[4] where the proper grounds for such relief appear from the pleadings and proof.[5] On the other hand, some courts take the view that a declaratory judgment stands by itself and does not call for executory process or coercive relief.[6]

[FN1] *McCabe v. Arcidy*, 138 N.H. 20, 635 A.2d 446 (1993); *Barland v. Eau Claire County*, 216 Wis. 2d 560, 575 N.W.2d 691 (1998).

[FN2] *Mycogen Corp. v. Monsanto Co.*, 28 Cal. 4th 888, 123 Cal. Rptr. 2d 432, 51 P.3d 297 (2002); *Capital Properties, Inc. v. State*, 749 A.2d 1069 (R.I. 1999).

[FN3] *Scott v. Gooding County*, 137 Idaho 206, 46 P.3d 23 (2002); *Blecha ex rel. Raney v. Blecha*, 257 Neb. 543, 599 N.W.2d 829 (1999).

[FN4] *O'Callaghan v. State*, 914 P.2d 1250 (Alaska 1996); *State ex rel. Oklahoma Firefighters Pension and Retirement System v. City of Spencer*, 2009 OK 73, 237 P.3d 125 (Okla. 2009) (declaratory, executory, or coercive relief); *Ken Leahy Const., Inc. v. Cascade General, Inc.*, 329 Or. 566, 994 P.2d 112 (1999).

[FN5] *Cortez v. CMG Worldwide Inc.*, 962 F. Supp. 308 (N.D. N.Y. 1997); *Adams v. Chilcott*, 182 Mont. 511, 597 P.2d 1140 (1979).

[FN6] *Stevenson v. Lanham*, 127 Md. App. 597, 736 A.2d 363 (1999); *Straus v. Governor*, 459 Mich. 526, 592 N.W.2d 53 (1999).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 252

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
L. Scope and Types of Relief in Declaratory Judgment Proceedings; Postjudgment Relief
1. Relief Under State Statutes
a. Consequential and Incidental Relief

[Topic Summary Correlation Table References](#)

§ 253. Types of relief

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  384 to 388

Monetary damages are necessary and proper relief in an action for declaratory judgment,[1] and a court may grant a money judgment as consequential relief in a declaratory judgment action.[2] In some jurisdictions, however, the State Declaratory Judgment Act does not give rise to an independent right to nominal damages.[3] After a declaration of rights in his or her favor, a plaintiff may obtain judgment for the amount due him or her under the contract by original petition or by a subsequent application in the same proceeding.[4]

In addition, incidental and consequential relief has taken the form of an injunction.[5] Some state statutes require notice to the party to be enjoined and a hearing.[6] An injunction is not effective against a party unless the party has been named as a defendant in the action,[7] and a court cannot enjoin unknown future actions.[8]

[FN1] *Durant v. State*, 456 Mich. 175, 566 N.W.2d 272, 119 Ed. Law Rep. 1146 (1997).

[FN2] *Hoiengs v. County of Adams*, 245 Neb. 877, 516 N.W.2d 223 (1994); *Pellegrino v. Rhode Island Ethics Com'n*, 788 A.2d 1119 (R.I. 2002).

[FN3] *Barcik v. Kubiacyk*, 321 Or. 174, 895 P.2d 765, 100 Ed. Law Rep. 759 (1995).

[FN4] *Standard Federal Sav. Bank v. State Farm Fire & Cas. Co.*, 248 Neb. 552, 537 N.W.2d 333 (1995).

[FN5] *Bryant v. Picado*, 338 Ark. 227, 996 S.W.2d 17 (1999); *Ken Leahy Const., Inc. v. Cascade General, Inc.*, 329 Or. 566, 994 P.2d 112 (1999).

[FN6] *Kansas East Conference of United Methodist Church, Inc. v. Bethany Medical Center, Inc.*, 266 Kan. 366, 969 P.2d 859 (1998); *Tuck v. Blackmon*, 798 So. 2d 402 (Miss. 2001).

[FN7] *Pearson v. Virginia City Ranches Ass'n*, 2000 MT 12, 298 Mont. 52, 993 P.2d 688 (2000); *Blue Cross and Blue Shield of Virginia v. St. Mary's Hosp. of Richmond, Inc.*, 245 Va. 24, 426 S.E.2d 117 (1993).

[FN8] *Jefferson v. Big Horn County*, 2000 MT 163, 300 Mont. 284, 4 P.3d 26 (2000) (court may not declare taxes not yet imposed as unlawful).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 253

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
L. Scope and Types of Relief in Declaratory Judgment Proceedings; Postjudgment Relief
1. Relief Under State Statutes
a. Consequential and Incidental Relief

[Topic Summary Correlation Table References](#)

§ 254. Obtaining relief

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  390

A party to a declaratory judgment action may request further relief either in conjunction with that action or in a separate action.[1] The defendant may also secure coercive relief by a counterclaim or cross petition.[2]

[FN1] [Stevenson v. Lanham](#), 127 Md. App. 597, 736 A.2d 363 (1999).

[FN2] [Petersime Incubator Co. v. Bundy Incubator Co.](#), 135 F.2d 580 (C.C.A. 6th Cir. 1943); [Gray v. Defa](#), 103 Utah 339, 135 P.2d 251, 155 A.L.R. 495 (1943).

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
L. Scope and Types of Relief in Declaratory Judgment Proceedings; Postjudgment Relief
1. Relief Under State Statutes
b. Supplemental Relief

Topic Summary Correlation Table References

§ 255. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  391

The courts may grant further relief based on a declaratory judgment whenever necessary or proper.[1]

Traditional principles of res judicata, such as the doctrine of merger,[2] are inapplicable in the context of statutory actions for further relief based on declaratory judgments.[3]

Supplemental relief may be that which is necessary to make the judgment effective[4] and may include damages[5] and interests and costs.[6]

[FN1] *Aspgren v. City of Columbia City*, 34 Or. App. 991, 581 P.2d 536 (1978).

[FN2] *Farley v. Missouri Dept. of Natural Resources*, 592 S.W.2d 539 (Mo. Ct. App. W.D. 1979).

[FN3] *Atchison v. City of Englewood*, 180 Colo. 407, 506 P.2d 140 (1973); *Bankers and Shippers Ins. Co. of New York v. Electro Enterprises, Inc.*, 287 Md. 641, 415 A.2d 278 (1980).

[FN4] *Koscot Interplanetary, Inc. v. State ex rel. Conner*, 230 So. 2d 24 (Fla. 4th DCA 1970).

[FN5] *Farley v. Missouri Dept. of Natural Resources*, 592 S.W.2d 539 (Mo. Ct. App. W.D. 1979).

[FN6] *Liberty Mut. Ins. Co. v. Tavarez*, 797 A.2d 480 (R.I. 2002) (abrogated on other grounds by, *Metropolitan Property and Cas. Ins. Co. v. Barry*, 892 A.2d 915 (R.I. 2006)).

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
L. Scope and Types of Relief in Declaratory Judgment Proceedings; Postjudgment Relief
1. Relief Under State Statutes
b. Supplemental Relief

[Topic Summary Correlation Table References](#)

§ 256. Petition; order to show cause

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  391

Supplemental relief may only be entered after an order to show cause and then on a determination that it should be granted to complete the relief declared.[1] A supplemental relief provision requiring an order to show cause applies when additional relief is requested, after a declaratory judgment has been granted, in order to supplement or enforce the declaratory judgment, and does not apply where the nondeclaratory relief is requested in the original complaint together with the declaratory relief.[2]

[FN1] State ex rel. Bingaman v. Valley Sav. & Loan Ass'n, 1981-NMSC-108, 97 N.M. 8, 636 P.2d 279 (1981).

[FN2] State ex rel. Bardacke v. New Mexico Federal Sav. and Loan Ass'n, 1985-NMSC-045, 102 N.M. 673, 699 P.2d 604, 61 A.L.R.4th 1061 (1985).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 256

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
L. Scope and Types of Relief in Declaratory Judgment Proceedings; Postjudgment Relief
1. Relief Under State Statutes
c. Costs and Attorney's Fees

[Topic Summary Correlation Table References](#)

§ 257. Generally

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑388

In any proceeding under the Uniform Declaratory Judgments Act, the court may make such award of costs as may seem equitable and just^[1] if the party pleads for such fees.^[2] In some jurisdictions, the award of fees is in the court's discretion, subject to the requirement that any fees awarded must be reasonable and necessary, which are matters of fact, as well as to the requirement that fees must be equitable and just, which are matters of law.^[3] A court will deny an award of attorney's fees in connection with an action for declaratory judgment over which the court declined to exercise jurisdiction when the underlying case is before another court.^[4]

Costs on appeal have been denied in an action for a declaratory judgment construing a tax statute because of the public character of the question involved,^[5] but in a suit to determine whether an executor was abusing his or her discretion in selling the testator's farm to a nephew who offered a higher price than the petitioner, who was denied relief, the costs and expenses of the appeal could be allowed in the discretion of the probate court to the respondents other than the executor who participated therein.^[6]

When denying an award for attorney's fees, the court should detail all relevant evidence and explain why the evidence was factually insufficient to support the award.^[7]

Under a statute permitting the court in a declaratory judgment action to award reasonable and necessary attorney's fees as are equitable and just, the reasonable and necessary requirements are questions of fact to be determined by the fact finder, but the equitable and just requirements are questions of law for the trial court.^[8]

The trial court has discretion to award some, but not all, attorney's fees found reasonable and necessary by a jury in a declaratory judgment action.^[9] The amount of reasonable and necessary attorney's fees does not dictate their availability under the state Declaratory Judgment Act; the trial court must decide whether it would be just and equitable to award them.^[10]

A party cannot convert a claim for which attorney's fees are not recoverable into a claim for which a fee

award is available simply by restyling the claim as a request for declaratory judgment.[11]

A towing company has been held not entitled to an award of attorney's fees in an action for which it obtained a declaratory judgment that the vehicle's insurer was liable for the entire amount of unpaid towing and storage charges where the declaratory judgment action was redundant of the claim under the Vehicle Storage Facility Act, which did not permit private litigants to recover attorney's fees.[12]

[FN1] Unif. Declaratory Judgments Act § 10.

[FN2] *Ritchie v. City of Fort Worth*, 730 S.W.2d 448 (Tex. App. Fort Worth 1987), writ refused n.r.e., (Sept. 16, 1987).

[FN3] *Bocquet v. Herring*, 972 S.W.2d 19 (Tex. 1998), petition for reh'g of writ of error/cause filed, (Apr. 29, 1998).

[FN4] *John Chezik Buick Co. v. Friendly Chevrolet Co.*, 749 S.W.2d 591 (Tex. App. Dallas 1988), writ denied, (Nov. 16, 1988).

[FN5] *Boyer-Campbell Co. v. Fry*, 271 Mich. 282, 260 N.W. 165, 98 A.L.R. 827 (1935).

[FN6] *Sylvester v. Newton*, 321 Mass. 416, 73 N.E.2d 585 (1947).

[FN7] *Bocquet v. Herring*, 972 S.W.2d 19 (Tex. 1998), petition for reh'g of writ of error/cause filed, (Apr. 29, 1998).

[FN8] *Ridge Oil Co., Inc. v. Guinn Investments, Inc.*, 148 S.W.3d 143 (Tex. 2004).

[FN9] *Ridge Oil Co., Inc. v. Guinn Investments, Inc.*, 148 S.W.3d 143 (Tex. 2004).

[FN10] *Ridge Oil Co., Inc. v. Guinn Investments, Inc.*, 148 S.W.3d 143 (Tex. 2004).

[FN11] *U.S. Fidelity & Guar. Co. v. Coastal Refining & Marketing, Inc.*, 369 S.W.3d 559 (Tex. App. Houston 14th Dist. 2012).

[FN12] *Underwriters at Lloyds of London v. Harris*, 319 S.W.3d 863 (Tex. App. Eastland 2010).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 257

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
L. Scope and Types of Relief in Declaratory Judgment Proceedings; Postjudgment Relief
1. Relief Under State Statutes
c. Costs and Attorney's Fees

[Topic Summary Correlation Table References](#)

§ 258. Insured's right to recover attorney's fees

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  388

A.L.R. Library

[Insured's right to recover attorneys' fees incurred in declaratory judgment action to determine existence of coverage under liability policy, 87 A.L.R.3d 429](#)

Generally, if an insurer refuses to defend its insured at the insurer's own expense, as it had contracted to do, and the duty to defend is later established in a declaratory judgment action, the insurer should be compelled to bear the consequences of its wrong decision so that the insured stands in the same financial position after the declaratory judgment action establishing coverage as it did prior thereto and is not "out" the attorney's fees incurred in such action.[1] In at least one jurisdiction, this general principle has been qualified, the court stating that an insurer is liable for the insured's fees in such circumstances only if it is shown that the insurer has acted in bad faith or fraudulently or was stubbornly litigious.[2] Another court held that fees are not recoverable unless the insurer has breached the contract in some respect, usually by wrongfully refusing to defend the insured.[3]

The argument has been made by those seeking reimbursement for attorney's fees incurred in a declaratory judgment action to determine the existence of coverage under liability policies that the insurance contracts themselves provide for such reimbursement.[4] Other courts have held that when a person buys insurance, he or she seeks protection and not litigation with the insurance company; thus, the insured has the right to recoup attorney's fees it has incurred because an insurer refused to defend or to pay the justified claim of the insured regardless of whether a lawsuit is filed against the insured.[5]

An insurer's appeal of a declaratory judgment in favor of the insured does not warrant staying the insurer's appeal of an award of attorney's fees to the insured. In addition, the insurer's appeal should not be consolidated with the insurer's appeal of the award of attorney's fees to the insured.[6]

[FN1] *Cohen v. American Home Assur. Co.*, 255 Md. 334, 258 A.2d 225 (1969).

[FN2] *New Hampshire Ins. Co. v. Christy*, 200 N.W.2d 834, 87 A.L.R.3d 413 (Iowa 1972).

[FN3] *American Standard Ins. Co. v. Le*, 551 N.W.2d 923 (Minn. 1996) (abrogated on other grounds by, *Rubey v. Vannett*, 714 N.W.2d 417 (Minn. 2006)).

[FN4] *Allstate Ins. Co. v. Robins*, 42 Colo. App. 539, 597 P.2d 1052 (App. 1979); *Bankers and Shippers Ins. Co. of New York v. Electro Enterprises, Inc.*, 287 Md. 641, 415 A.2d 278 (1980).

[FN5] *Olympic S.S. Co., Inc. v. Centennial Ins. Co.*, 117 Wash. 2d 37, 811 P.2d 673 (1991).

[FN6] *Unigard Sec. Ins. Co. v. Murphy Oil USA, Inc.*, 326 Ark. 826, 937 S.W.2d 627 (1996).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 258

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
L. Scope and Types of Relief in Declaratory Judgment Proceedings; Postjudgment Relief
1. Relief Under State Statutes
c. Costs and Attorney's Fees

[Topic Summary Correlation Table References](#)

§ 259. Insured's right to recover attorney's fees—Statutes providing for attorney's fees

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  388

Some jurisdictions have statutes specifically providing for the allowance of attorney's fees to the insured where judgment has been rendered against the insurance carrier in an action on its policy.[1] Attorney's fees have been allowed to the insured under such a statute where the action was commenced by the insurance carrier against the insured to determine coverage notwithstanding that the statute specifically referred to actions commenced by the insured.[2] However, fees have been denied under such a statute where the court felt that justice would be served by such denial as where the insurer's contention that the insured had not complied with the terms of the liability policy, although not upheld, was at least arguable.[3] Statutes providing for the recovery of attorney's fees only when the insurer has acted in bad faith or exhibited other vexatious conduct are of a penal nature, but even with the added restrictions, recovery of such fees has been awarded[4] although one court has determined that there was insufficient evidence of the insurer's bad faith, fraud, or stubborn litigiousness and denied recovery.[5]

[FN1] *Home Ins. Co. v. Arkansas Mechanical Contractors, Inc.*, 531 F.2d 906 (8th Cir. 1976).

[FN2] *All Nation Ins. Co. v. Brown*, 344 N.W.2d 493 (S.D. 1984).

[FN3] *Mid-South Ins. Co. v. Dellinger*, 239 Ark. 169, 388 S.W.2d 6 (1965).

[FN4] *Manchester Ins. & Indem. Co. v. Strom*, 122 Ill. App. 2d 183, 258 N.E.2d 150 (2d Dist. 1970); *All Nation Ins. Co. v. Brown*, 344 N.W.2d 493 (S.D. 1984).

[FN5] *Anderson v. Allstate Ins. Co.*, 121 Ga. App. 582, 174 S.E.2d 591 (1970).

AMJUR DECLJUDS § 259

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
L. Scope and Types of Relief in Declaratory Judgment Proceedings; Postjudgment Relief
1. Relief Under State Statutes
c. Costs and Attorney's Fees

[Topic Summary Correlation Table References](#)

§ 260. Insured's right to recover attorney's fees—Recovery in absence of contract or statute

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  388

A.L.R. Library

[Insured's right to recover attorneys' fees incurred in declaratory judgment action to determine existence of coverage under liability policy, 87 A.L.R.3d 429](#)

The courts differ on whether an insured may, in the absence of a pertinent statute or contractual provision, recover his or her attorney's fees, incurred in a declaratory judgment action to determine the existence of coverage under a specific liability policy, and some decisions have been rendered in favor of the insured, under the view that such fees are or should be recoverable,[1] while another court has held that the fees are not recoverable.[2]

Under the particular circumstances of some cases in which no statute or contractual provision was involved, the courts have held that attorney's fees incurred in declaratory judgment actions to determine the existence of coverage under liability policies should be allowed,[3] sometimes noting that the interests of justice require their allowance, while other courts have held that such fees are not allowable regardless of the circumstances.[4]

One court refused to award counsel fees to a defendant in an action brought by an insurer to determine coverage because the fees were not authorized by contract or statute, and the litigation was not brought by the insurer out of spite or contentious or obstructive motives.[5]

[FN1] *Union Mut. Fire Ins. Co. v. Inhabitants of Town of Topsham*, 441 A.2d 1012 (Me. 1982); *American Home Assur. Co. v. Weissman*, 79 A.D.2d 923, 434 N.Y.S.2d 410 (1st Dep't 1981).

[FN2] *Reis v. Aetna Cas. and Sur. Co. of Illinois*, 69 Ill. App. 3d 777, 25 Ill. Dec. 824, 387 N.E.2d 700 (1st Dist. 1978).

[FN3] Allstate Ins. Co. v. Aetna Cas. & Sur. Co., 123 Misc. 2d 932, 475 N.Y.S.2d 219 (Sup 1984); Gordon-Gallup Realtors, Inc. v. Cincinnati Ins. Co., 274 S.C. 468, 265 S.E.2d 38 (1980).

[FN4] Union Mut. Fire Ins. Co. v. Inhabitants of Town of Topsham, 441 A.2d 1012 (Me. 1982); American Family Mut. Ins. Co. v. Brown, 631 S.W.2d 375 (Mo. Ct. App. W.D. 1982).

[FN5] Western Cas. and Sur. Co. v. Marchant, 615 P.2d 423 (Utah 1980).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 260

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
L. Scope and Types of Relief in Declaratory Judgment Proceedings; Postjudgment Relief
2. Relief Under Federal Declaratory Judgments Act
a. In General

[Topic Summary Correlation Table References](#)

§ 261. Further relief based on declaratory judgment

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑 384, 385, 390

Under the Federal Declaratory Judgment Act,[1] federal courts have the power, upon a subsequent petition, to grant coercive or further declaratory relief in connection with a final declaratory judgment,[2] and it is within the discretion of the court whether to grant such relief based on a declaratory judgment.[3] This provision has been interpreted to permit the courts to order further declaratory relief even though such relief may not have been available at the time of the declaratory action.[4]

Declaratory relief need not entirely dispose of the case because further necessary and proper relief for unresolved factual issues may be sought at a later time.[5] Thus, a court may refuse to issue a declaratory judgment on all issues presented in the case.[6]

The requirement that further relief must be based on the declaratory judgment should be broadly interpreted and does not mean that further relief is only appropriate to effect a declaratory judgment.[7]

CUMULATIVE SUPPLEMENT

Cases:

Federal district courts cannot award relief pursuant to the Texas Declaratory Judgment Act (TDJA), because declaratory judgment is procedural, not substantive, and federal courts apply their own procedural rules. [V.T.C.A., Civil Practice & Remedies Code § 37.001 et seq. Miller v. CitiMortgage, Inc., 970 F. Supp. 2d 568 \(N.D. Tex. 2013\).](#)

[END OF SUPPLEMENT]

[FN1] 28 U.S.C.A. § 2202.

[FN2] Kunkel v. Continental Cas. Co., 866 F.2d 1269 (10th Cir. 1989).

[FN3] Eastman Kodak Co. v. Studiengesellschaft Kohle mbH, 392 F. Supp. 1152 (D. Del. 1975).

[FN4] Gant v. Grand Lodge of Texas, 12 F.3d 998 (10th Cir. 1993).

[FN5] Kunkel v. Continental Cas. Co., 866 F.2d 1269 (10th Cir. 1989).

[FN6] Henglein v. Colt Industries Operating Corp., 260 F.3d 201 (3d Cir. 2001).

[FN7] Horn & Hardart Co. v. National R.R. Passenger Corp., 659 F. Supp. 1258 (D.D.C. 1987), order aff'd, 843 F.2d 546 (D.C. Cir. 1988).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 261

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
L. Scope and Types of Relief in Declaratory Judgment Proceedings; Postjudgment Relief
2. Relief Under Federal Declaratory Judgments Act
a. In General

[Topic Summary Correlation Table References](#)

§ 262. Suit for postjudgment relief

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑385

A postjudgment relief proceeding is commenced by the filing of a motion for the particular relief desired,[1] and the postjudgment relief sought need not be demanded, nor even proved, in the original action for declaratory relief.[2] Thereafter, notice must be served on the adverse party followed by a hearing upon the further relief in question.[3]

After the original declaratory judgment has been affirmed on appeal, the party who obtained the judgment may return to the district court and file a petition for further relief.[4]

Observation:

The absence of a requirement for the inclusion of a provision for postjudgment relief in a complaint for a declaratory judgment is supported by the Federal Rules of Civil Procedure provision[5] which states that every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled even if the party has not demanded such relief in his or her pleadings.[6]

[FN1] *Hobson v. Eaton*, 327 F. Supp. 74, 26 Ohio Misc. 59, 54 Ohio Op. 2d 107, 55 Ohio Op. 2d 179 (N.D. Ohio 1970); *Morris v. Travisono*, 373 F. Supp. 177 (D.R.I. 1974), order aff'd, 509 F.2d 1358 (1st Cir. 1975).

[FN2] *Fred Ahlert Music Corp. v. Warner/Chappell Music, Inc.*, 155 F.3d 17 (2d Cir. 1998); *Alcoa S. S. Co. v. Velez*, 285 F. Supp. 123 (D.P.R. 1968).

[FN3] *Morris v. Travisono*, 509 F.2d 1358 (1st Cir. 1975).

[FN4] *McNally v. American States Ins. Co.*, 339 F.2d 186 (6th Cir. 1964); *Horn & Hardart Co. v. Na-*

tional R.R. Passenger Corp., 659 F. Supp. 1258 (D.D.C. 1987), order aff'd, 843 F.2d 546 (D.C. Cir. 1988).

[FN5] Fed. R. Civ. P. 54(c).

[FN6] Hudson v. Hardy, 424 F.2d 854 (D.C. Cir. 1970).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 262

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
L. Scope and Types of Relief in Declaratory Judgment Proceedings; Postjudgment Relief
2. Relief Under Federal Declaratory Judgments Act
b. Particular Types of Postjudgment Relief

[Topic Summary Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#) 🔑385

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS IV L 2 b REF

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
L. Scope and Types of Relief in Declaratory Judgment Proceedings; Postjudgment Relief
2. Relief Under Federal Declaratory Judgments Act
b. Particular Types of Postjudgment Relief

Topic Summary Correlation Table References

§ 263. Damages

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  388

Under the Federal Declaratory Judgment Act, a federal court has broad power to grant further relief, including monetary damages,[1] whether or not the request for monetary damages has been demanded, or even proved, in the original action for declaratory relief.[2]

[FN1] 28 U.S.C.A. § 1651.

[FN2] *Calderon v. U.S. Dist. Court for Eastern Dist. of California*, 107 F.3d 756 (9th Cir. 1997), as amended on denial of reh'g and reh'g en banc, (Apr. 16, 1997); *Jankovic v. U.S.*, 384 F. Supp. 1355 (D.D.C. 1974).

[FN3] *Doran v. Vicorp Restaurants, Inc.*, 407 F. Supp. 2d 1115 (C.D. Cal. 2005).

[FN1] *Cincinnati Ins. Co. v. Star Financial Bank*, 35 F.3d 1186 (7th Cir. 1994); *BancInsure, Inc. v. BNC Nat. Bank, N.A.*, 263 F.3d 766 (8th Cir. 2001).

[FN2] *Fred Ahlert Music Corp. v. Warner/Chappell Music, Inc.*, 155 F.3d 17 (2d Cir. 1998).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 263

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
L. Scope and Types of Relief in Declaratory Judgment Proceedings; Postjudgment Relief
2. Relief Under Federal Declaratory Judgments Act
b. Particular Types of Postjudgment Relief

Topic Summary Correlation Table References

§ 264. Injunctions

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  387

Injunctive relief may be granted by the court to protect and enforce its declaratory judgment,[1] after notice and a hearing as required by the Declaratory Judgement Act.[2] An injunction is proper to preserve the status quo in a declaratory judgment action[3] and to avoid harm to one of the parties.[4]

The federal courts have denied injunctive relief as part of a declaratory judgment action because of overriding public interests.[5]

[FN1] *Morris v. Travisono*, 509 F.2d 1358 (1st Cir. 1975); *McCann v. Kerner*, 436 F.2d 1342 (7th Cir. 1971).

[FN2] *Starter Corp. v. Converse, Inc.*, 170 F.3d 286, 51 Fed. R. Evid. Serv. 906, 44 Fed. R. Serv. 3d 315 (2d Cir. 1999).

[FN3] *Kidder, Peabody & Co., Inc. v. Maxus Energy Corp.*, 925 F.2d 556 (2d Cir. 1991).

[FN4] *Insurance Services of Beaufort, Inc. v. Aetna Cas. and Sur. Co.*, 966 F.2d 847 (4th Cir. 1992).

[FN5] *R.A. Glancy & Sons, Inc. v. U.S., Dept. of Veterans Affairs*, 180 F.3d 553 (3d Cir. 1999).

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
L. Scope and Types of Relief in Declaratory Judgment Proceedings; Postjudgment Relief
2. Relief Under Federal Declaratory Judgments Act
b. Particular Types of Postjudgment Relief

[Topic Summary Correlation Table References](#)

§ 265. Injunctions—Injunctions against state actions or involving state law

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  385

The federal courts will refuse to issue an injunction to enforce a declaratory judgment where such relief is sought as a means of circumventing the Federal Anti-Injunction Act,[1] which prohibits injunctions against pending state court proceedings.[2] Moreover, the federal courts will not issue a declaratory judgment if the judgment has the same effect as an injunction.[3] There is an exception to the Anti-Injunction Act, however, if the requested relief is required in order to avoid irreparable injury, and it is clear that under no circumstances can the government ultimately prevail.[4]

The federal courts may not issue an injunction concerning a state tax law.[5]

[FN1] 28 U.S.C.A. § 2283.

[FN2] *Golden Challenger Marinera S.A. v. Spalieris*, 795 F. Supp. 802 (E.D. La. 1992).

[FN3] *California v. Randtron*, 284 F.3d 969 (9th Cir. 2002).

[FN4] *S.E.C. v. Credit Bancorp., Ltd.*, 297 F.3d 127 (2d Cir. 2002).

[FN5] *Franchise Tax Bd. of California v. Alcan Aluminium Ltd.*, 493 U.S. 331, 110 S. Ct. 661, 107 L. Ed. 2d 696 (1990).

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.

IV. Practice and Procedure
L. Scope and Types of Relief in Declaratory Judgment Proceedings; Postjudgment Relief
2. Relief Under Federal Declaratory Judgments Act
b. Particular Types of Postjudgment Relief

[Topic Summary Correlation Table References](#)

§ 266. Attorney's fees

West's Key Number Digest

West's Key Number Digest, [Declaratory Judgment](#)  388

Further relief based on a declaratory judgment may also be awarded in the form of attorney's fees.[1] Such fees may be awarded to a successful defendant,[2] as well as a plaintiff in a declaratory judgment suit.[3] However, plaintiffs may not receive attorney's fees and costs unless they secured monetary damages as part of the declaratory judgment action.[4] Attorney's fees sought as postjudgment relief will be limited to those fees expended from the date of the filing of the declaratory judgment suit to the entry of the judgment.[5]

The plaintiff's right to attorney's fees upon winning a declaratory judgment suit in the federal court cannot be based on a state declaratory judgment statute.[6] In a declaratory suit based on diversity jurisdiction, attorney's fees may not be awarded under the state's declaratory judgment act where the act functions solely as a procedural mechanism for resolving substantive controversies already within the jurisdiction of the courts, and it is not substantive law that applies to the diversity case.[7]

[FN1] [National Fire Ins. Co. of Hartford v. Board of Public Instruction of Madison County, Fla.](#), 239 F.2d 370 (5th Cir. 1956).

[FN2] [National Indem. Co. v. Harper](#), 295 F. Supp. 749 (W.D. Mo. 1969).

[FN3] [Broyles v. Commercial Union Ins. Co. of New York](#), 287 F. Supp. 942 (W.D. Ark. 1968); [Western World Ins. Co., Inc. v. Harford Mut. Ins. Co.](#), 602 F. Supp. 36 (D. Md. 1985), judgment aff'd in part, rev'd in part on other grounds, 784 F.2d 558 (4th Cir. 1986).

[FN4] [DeCarlo v. Perales](#), 963 F. Supp. 181 (N.D. N.Y. 1997).

[FN5] [Broyles v. Commercial Union Ins. Co. of New York](#), 287 F. Supp. 942 (W.D. Ark. 1968).

[FN6] *Volpe v. Prudential Property and Cas. Ins. Co.*, 802 F.2d 1 (1st Cir. 1986); *Self-Insurance Institute of America, Inc. v. Koriath*, 53 F.3d 694 (5th Cir. 1995).

[FN7] *Utica Lloyd's of Texas v. Mitchell*, 138 F.3d 208 (5th Cir. 1998) (applying Texas law).

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS § 266

END OF DOCUMENT

American Jurisprudence, Second Edition
Database updated August 2014
Declaratory Judgments
Romualdo P. Eclavea, J.D. and Karl Oakes, J.D.[Topic Summary](#)**Correlation Table**

Declaratory Judgments

2003..... 2013

1.....	§1
2.....	§2
2.....	§3
3.....	§3
4.....	§4
5.....	§5
6.....	§6
7.....	§7
8.....	§8
9.....	§9
10.....	§10
11.....	§11
12.....	§12
13.....	§13
14.....	§14
15.....	§15
16.....	§16
17.....	§17
18.....	§18
19.....	§19
20.....	§20
21.....	§21
22.....	§22
23.....	§23
24.....	§24
25.....	§31
26.....	§25
27.....	§26
28.....	§27
29.....	§28

22A Am. Jur. 2d Declaratory Judgments Correlation Table

30.....	§29
31.....	§30
32.....	§31
33.....	§32
34.....	§33
35.....	§34
36.....	§35
37.....	§36
37.....	§38
37.....	§41
37.....	§44
38.....	§36
39.....	§36
40.....	§37
41.....	§38
42.....	§39
43.....	§40
44.....	§41
45.....	§42
46.....	§43
47.....	§44
48.....	§45
49.....	§46
50.....	§47
51.....	§48
52.....	§49
53.....	§50
54.....	§51
55.....	§52
56.....	§53
57.....	§54
58.....	§55
59.....	§56
60.....	§57
61.....	§58
62.....	§58
63.....	§59
64.....	§60
65.....	§61
66.....	§62
67.....	§63
68.....	§64
69.....	§65
70.....	§66
71.....	§67

22A Am. Jur. 2d Declaratory Judgments Correlation Table

72.....	§68
73.....	§69
74.....	§70
75.....	§71
76.....	§72
77.....	§73
78.....	§74
79.....	§75
80.....	§76
81.....	§77
82.....	§78
83.....	§79
84.....	§80
85.....	§81
86.....	§82
87.....	§83
87.....	§84
88.....	§85
89.....	§86
90.....	§87
91.....	§88
91.....	§89
92.....	§89
93.....	§90
94.....	§91
95.....	§92
96.....	§93
97.....	§94
98.....	§95
99.....	§96
100.....	§97
101.....	§98
102.....	§99
103.....	§100
104.....	§101
105.....	§102
106.....	§103
107.....	§104
108.....	§105
109.....	§106
110.....	§107
111.....	§108
112.....	§109
113.....	§110
114.....	§111

115.....	§ 112
116.....	§ 113
117.....	§ 114
118.....	§ 115
119.....	§ 116
120.....	§ 117
121.....	§ 118
122.....	§ 119
123.....	§ 120
124.....	§ 121
125.....	§ 122
126.....	§ 124
127.....	§ 125
128.....	§ 123
129.....	§ 126
130.....	§ 127
131.....	§ 128
132.....	§ 129
133.....	§ 130
134.....	§ 131
135.....	§ 132
135.....	§ 133
136.....	§ 133
137.....	§ 134
138.....	§ 135
139.....	§ 136
140.....	§ 137
141.....	§ 138
142.....	§ 139
143.....	§ 140
144.....	§ 142
145.....	§ 143
146.....	§ 141
147.....	§ 144
148.....	§ 145
149.....	§ 146
150.....	§ 147
151.....	§ 148
152.....	§ 149
153.....	§ 150
154.....	§ 151
155.....	§ 152
156.....	§ 153
157.....	§ 154
158.....	§ 155

159.....	§ 156
160.....	§ 157
161.....	§ 158
162.....	§ 159
163.....	§ 160
164.....	§ 161
165.....	§ 162
166.....	§ 163
167.....	§ 164
168.....	§ 165
169.....	§ 166
170.....	§ 167
171.....	§ 168
172.....	§ 169
173.....	§ 170
174.....	§ 171
175.....	§ 172
176.....	§ 173
177.....	§ 174
178.....	§ 175
179.....	§ 176
180.....	§ 177
181.....	§ 178
182.....	§ 179
183.....	§ 180
184.....	§ 180
184.....	§ 181
185.....	§ 182
186.....	§ 183
187.....	§ 184
188.....	§ 185
189.....	§ 186
189.....	§ 188
190.....	§ 187
191.....	§ 188
192.....	§ 189
193.....	§ 190
194.....	§ 191
195.....	§ 192
196.....	§ 193
197.....	§ 194
198.....	§ 195
199.....	§ 196
200.....	§ 196
201.....	§ 197

22A Am. Jur. 2d Declaratory Judgments Correlation Table

202.....	§ 198
203.....	§ 199
204.....	§ 200
205.....	§ 201
206.....	§ 202
207.....	§ 203
208.....	§ 204
209.....	§ 205
210.....	§ 206
211.....	§ 207
212.....	§ 208
213.....	§ 209
214.....	§ 210
215.....	§ 211
216.....	§ 212
217.....	§ 213
218.....	§ 214
219.....	§ 215
220.....	§ 216
221.....	§ 217
222.....	§ 218
223.....	§ 219
224.....	§ 220
225.....	§ 221
226.....	§ 222
227.....	§ 223
228.....	§ 224
229.....	§ 225
230.....	§ 226
231.....	§ 227
232.....	§ 228
233.....	§ 229
234.....	§ 230
235.....	§ 231
236.....	§ 232
237.....	§ 233
238.....	§ 234
239.....	§ 235
240.....	§ 236
241.....	§ 237
242.....	§ 238
243.....	§ 239
244.....	§ 240
245.....	§ 241
246.....	§ 242

247.....	§243
248.....	§244
249.....	§245
250.....	§246
251.....	§247
252.....	§248
253.....	§249
253.....	§250
254.....	§251
255.....	§252
256.....	§253
257.....	§254
258.....	§255
259.....	§256
260.....	§257
261.....	§258
262.....	§259
263.....	§260
264.....	§261
265.....	§262
266.....	DELETED
267.....	§263
268.....	§264
269.....	§265
270.....	§266

© 2014 Thomson Reuters. 33-34B © 2014 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

AMJUR DECLJUDS COR

END OF DOCUMENT